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CODE OF FEDERAL REGULATIONS

Title 34
Education

Parts 400 to 679

Revised as of July 1, 2019

Containing a codification of documents
of general applicability and future effect

As of July 1, 2019

Published by the Office of the Federal Register
National Archives and Records Administration
as a Special Edition of the Federal Register

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 34 CFR 400.1 *refers to title 34, part 400, section 1.*

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Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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OLIVER A. POTTS,
Director,
Office of the Federal Register
July 1, 2019

THIS TITLE

Title 34—EDUCATION is composed of four volumes. The parts in these volumes are arranged in the following order: Parts 1–299, parts 300–399, parts 400–679, and part 680 to end. The contents of these volumes represent all regulations codified under this title of the CFR as of July 1, 2019.

For this volume, Michele Bugenhagen was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Martinez, assisted by Stephen J. Frattini.

Title 34—Education

(This book contains parts 400 to 679)

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AUTHORITY: 20 U.S.C. 2313(b), 25 U.S.C. 5321.

SOURCE: 57 FR 36730, Aug. 14, 1992, unless otherwise noted.

Subpart A—General

§ 401.1 Is the Secretary's decision not to make an award under the Native American Career and Technical Education Program subject to a hearing?

(a) After receiving written notice from an authorized official of the Department that the Secretary will not award a grant or cooperative agreement to an eligible applicant, an Indian tribal organization has 30 calendar days to make a written request to the Secretary for a hearing to review the Secretary's decision.

(b) Within 10 business days of the Department's receipt of a hearing request, the Secretary designates a Department employee who is not assigned to the Office of Career, Technical, and Adult Education to serve as a hearing officer. The hearing officer conducts a hearing and issues a written decision within 75 calendar days of the Department's receipt of the hearing request. The hearing officer establishes rules for the conduct of the hearing. The hearing officer conducts the hearing solely on the basis of written submissions unless the officer determines, in accordance with standards in 34 CFR 81.6(b), that oral argument or testimony is necessary.

(c) The Secretary does not make any award under this part to an Indian tribal organization until the hearing officer issues a written decision on any appeal brought under this section.

[84 FR 7299, Mar. 4, 2019]

§§ 401.2–401.5 [Reserved]

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AUTHORITY: 29 U.S.C. 3292, *et seq.*, unless otherwise noted.

SOURCE: 73 FR 2315, Jan. 14, 2008, unless otherwise noted.

Subpart A—General

§ 462.1 What is the scope of this part?

The regulations in this part establish the—

(a) Procedures the Secretary uses to determine the suitability of standardized tests for use in the National Reporting System for Adult Education (NRS) to measure educational gain of participants in an adult education program required to report under the NRS; and

(b) Procedures States and local eligible providers must follow when measuring educational gain for use in the NRS.

(Authority: 29 U.S.C. 3292)

[73 FR 2315, Jan. 14, 2008, as amended at 81 FR 55551, Aug. 19, 2016]

§ 462.2 What regulations apply?

The following regulations apply to this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(7) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(8) 34 CFR part 97 (Protection of Human Subjects).

(9) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(10) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 462.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 29 U.S.C. 3292)

[81 FR 55551, Aug. 19, 2016]

§ 462.3 What definitions apply?

(a) *Definitions in the Adult Education and Family Literacy Act (Act).* The following terms used in these regulations are defined in section 203 of the Adult Education and Family Literacy Act, 20 U.S.C. 3292 (Act):

Adult education,
Eligible provider,
Individual of limited English proficiency,
Individual with a disability,
Literacy.

(b) *Other definitions.* The following definitions also apply to this part:

Adult basic education (ABE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ABE literacy level listed in the NRS educational functioning level table in the Guidelines.

Adult education population means individuals—

(1) Who have attained 16 years of age;

(2) Who are not enrolled or required to be enrolled in secondary school under State law; and

(3) Who—

(i) Are basic skills deficient;

(ii) Do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(iii) Are English language learners.

Adult secondary education (ASE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ASE literacy level listed in the NRS educational functioning level table in the Guidelines.

Content domains, content specifications, or NRS skill areas mean, for the purpose of the NRS, reading, writing, and speaking the English language, mathematics, problem solving, English language acquisition, and other literacy skills as defined by the Secretary.

Educational functioning levels mean the ABE, ASE, and ESL literacy levels, as provided in the Guidelines, that describe a set of skills and competencies that students demonstrate in the NRS skill areas.

English as a Second Language (ESL) means instruction designed for an adult whose educational functioning level is equivalent to a particular ESL English language proficiency level listed in the NRS educational functioning level table in the Guidelines.

Guidelines means the *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027) (also known as NRS Implementation Guidelines) posted on the Internet at: *www.nrsweb.org*.

Local eligible provider means an ''eligible provider'' as defined in the Act that operates an adult education program that is required to report under the NRS.

State means ''State'' and ''Outlying area'' as defined in the Act.

Test means a standardized test, assessment, or instrument that has a formal protocol on how it is to be administered. These protocols include, for example, the use of parallel, equated forms, testing conditions, time allowed for the test, standardized scoring, and the amount of instructional time a student needs before post-testing. Violation of these protocols often invalidates the test scores. Tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees. Tests may also include adaptive tests that use computerized algorithms for selecting and administering items in real time; however, for such instruments, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing.

Test administrator means an individual who is trained to administer tests the Secretary determines to be suitable under this part.

Test publisher means an entity, individual, organization, or agency that owns a registered copyright of a test or is licensed by the copyright holder to sell or distribute a test.

(Authority: 29 U.S.C. 3292, *et seq.*, unless otherwise noted)

[73 FR 2315, Jan. 14, 2008, as amended at 81 FR 55551, Aug. 19, 2016]

§ 462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?

A State or an eligible provider may continue to measure educational gain for the NRS using tests that the Secretary has identified in the most recent notice published in the FEDERAL REGISTER until the Secretary announces through a notice published in the FEDERAL REGISTER a date by which such tests may no longer be used.

(Authority: 29 U.S.C. 3292)

[81 FR 55551, Aug. 19, 2016]

Subpart B—What Process Does the Secretary Use To Review the Suitability of Tests for Use in the NRS?

§ 462.10 How does the Secretary review tests?

(a) The Secretary only reviews tests under this part that are submitted by a test publisher.

(b) A test publisher that wishes to have the suitability of its test determined by the Secretary under this part must submit an application to the Secretary, in the manner the Secretary may prescribe, by October 1, 2016, April 1, 2017, October 1, 2017, April 1, 2018, October 1, 2018, and by October 1 of each year thereafter.

(Authority: 29 U.S.C. 3292)

[73 FR 2315, Jan. 14, 2008, as amended at 81 FR 55552, Aug. 19, 2016]

§ 462.11 What must an application contain?

(a) *Application content and format.* In order for the Secretary to determine whether a standardized test is suitable for measuring the gains of participants in an adult education program required to report under the NRS, a test publisher must—

(1) Include with its application information listed in paragraphs (b) through (i) of this section, and, if applicable, the information listed in paragraph (j) of this section;

(2) Provide evidence that it holds a registered copyright of a test or is licensed by the copyright holder to sell or distribute a test.

(3)(i) Arrange the information in its application in the order it is presented in paragraphs (b) through (j) of this section; or

(ii) Include a table of contents in its application that identifies the location of the information required in paragraphs (b) through (j) of this section.

(4) Submit to the Secretary four copies of its application.

(b) *General information.* (1) A statement, in the technical manual for the test, of the intended purpose of the test and how the test will allow examinees to demonstrate the skills that are associated with the NRS educational functioning levels in the Guidelines.

(2) The name, address, e-mail address, and telephone and fax numbers of a contact person to whom the Secretary may address inquiries.

(3) A summary of the precise editions, forms, levels, and, if applicable, sub-tests and abbreviated tests that the test publisher is requesting that the Secretary review and determine to be suitable for use in the NRS.

(c) *Development.* Documentation of how the test was developed, including a description of—

(1) The nature of samples of examinees administered the test during pilot or field testing, such as—

(i) The number of examinees administered each item;

(ii) How similar the sample or samples of examinees used to develop and evaluate the test were to the adult education population of interest to the NRS; and

(iii) The steps, if any, taken to ensure that the examinees were motivated while responding to the test; and

(2) The steps taken to ensure the quality of test items or tasks, such as—

(i) The extent to which items or tasks on the test were reviewed for fairness and sensitivity; and

(ii) The extent to which items or tasks on the test were screened for the adequacy of their psychometric properties.

(3) The procedures used to assign items to—

(i) Forms, for tests that are constructed prior to being administered to examinees; or

(ii) Examinees, for adaptive tests in which items are selected in real time.

(d) *Maintenance.* Documentation of how the test is maintained, including a description of—

(1) How frequently, if ever, new forms of the test are developed;

(2) The steps taken to ensure the comparability of scores across forms of the test;

(3) The steps taken to maintain the security of the test;

(4) A history of the test's use, including the number of times the test has been administered; and

(5) For a computerized adaptive test, the procedures used to—

(i) Select subsets of items for administration;

(ii) Determine the starting point and termination conditions;

(iii) Score the test; and

(iv) Control for item exposure.

(e) *Match of content to the NRS educational functioning levels (content validity).* Documentation of the extent to which the items or tasks on the test cover the skills in the NRS educational functioning levels in the Guidelines, including—

(1) Whether the items or tasks on the test require the types and levels of skills used to describe the NRS educational functioning levels;

(2) Whether the items or tasks measure skills that are not associated with the NRS educational functioning levels;

(3) Whether aspects of a particular NRS educational functioning level are not covered by any of the items or tasks;

(4) The procedures used to establish the content validity of the test;

(5) The number of subject-matter experts who provided judgments linking the items or tasks to the NRS educational functioning levels and their qualifications for doing so, particularly their familiarity with adult education

and the NRS educational functioning levels; and

(6) The extent to which the judgments of the subject matter experts agree.

(f) *Match of scores to NRS educational functioning levels.* Documentation of the adequacy of the procedure used to translate the performance of an examinee on a particular test to an estimate of the examinee's standing with respect to the NRS educational functioning levels in the Guidelines, including—

(1) The standard-setting procedures used to establish cut scores for transforming raw or scale scores on the test into estimates of an examinee's NRS educational functioning level;

(2) If judgment-based procedures were used—

(i) The number of subject-matter experts who provided judgments, and their qualifications; and

(ii) Evidence of the extent to which the judgments of subject-matter experts agree;

(3) The standard error of each cut score, and how it was established; and

(4) The extent to which the cut scores might be expected to differ if they had been established by a different (though similar) panel of experts.

(g) *Reliability.* Documentation of the degree of consistency in performance across different forms of the test in the absence of any external interventions, including—

(1) The correlation between raw (or scale) scores across alternate forms of the test or, in the case of computerized adaptive tests, across alternate administrations of the test;

(2) The consistency with which examinees are classified into the same NRS educational functioning levels across forms of the test. Information regarding classification consistency should be reported for each NRS educational functioning level that the test is being considered for use in measuring;

(3) The adequacy of the research design leading to the estimates of the reliability of the test, including—

(i) The size of the sample(s);

(ii) The similarity between the sample(s) used in the data collection and the adult education population; and

(iii) The steps taken to ensure the motivation of the examinees; and

(4) Any other information explaining the methodology and procedures used to measure the reliability of the test.

(h) *Construct validity.* Documentation of the appropriateness of a given test for measuring educational gain for the NRS, *i.e.*, documentation that the test measures what it is intended to measure, including—

(1) The extent to which the raw or scale scores and the educational functioning classifications associated with the test correlate (or agree) with scores or classifications associated with other tests designed or intended to assess educational gain in the same adult education population as the NRS;

(2) The extent to which the raw or scale scores are related to other relevant variables, such as teacher evaluation, hours of instruction, or other measures that may be related to test performance;

(3) The adequacy of the research designs associated with these sources of evidence (*see* paragraph (g)(3) of this section); and

(4) Other evidence demonstrating that the test measures gains in educational functioning resulting from adult education and not from other construct-irrelevant variables, such as practice effects.

(i) *Other information.* (1) A description of the manner in which test administration time was determined, and an analysis of the speededness of the test.

(2) Additional guidance on the interpretation of scores resulting from any modifications of the tests for an individual with a disability.

(3) The manual provided to test administrators containing procedures and instructions for test security and administration.

(4) A description of the training or certification required of test administrators and scorers by the test publisher.

(5) A description of retesting (e.g., readministration of a test because of problems in the original administration such as the test taker becomes ill during the test and cannot finish, there are external interruptions during testing, or there are administration errors) procedures and the analysis upon

which the criteria for retesting are based.

(6) Such other evidence as the Secretary may determine is necessary to establish the test's compliance with the criteria and requirements the Secretary uses to determine the suitability of tests as provided in § 462.13.

(j) *Previous tests.* (1) For a test used to measure educational gain in the NRS before the effective date of these regulations that is submitted to the Secretary for review under this part, the test publisher must provide documentation of periodic review of the content and specifications of the test to ensure that the test continues to reflect NRS educational functioning levels.

(2) For a test first published five years or more before the date it is submitted to the Secretary for review under this part, the test publisher must provide documentation of periodic review of the content and specifications of the test to ensure that the test continues to reflect NRS educational functioning levels.

(3) For a test that has not changed in the seven years since the Secretary determined, under § 462.13, that it was suitable for use in the NRS that is again being submitted to the Secretary for review under this part, the test publisher must provide updated data supporting the validity of the test for use in classifying adult learners with respect to the NRS educational functioning levels and the measurement of educational gain as defined in § 462.43 of this part.

(4) If a test has been substantially revised—for example by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms, sub-tests, or number of hours between pre- and post-testing from the most recent edition reviewed by the Secretary under this part—the test publisher must provide an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and results from validity, reliability, and equating or standard-setting studies undertaken subsequent to the revisions.

(Authority: 29 U.S.C. 3292)

[73 FR 2315, Jan. 14, 2008, as amended at 81 FR 55552, Aug. 19, 2016]

§ 462.12 What procedures does the Secretary use to review the suitability of tests?

(a) *Review.* (1) When the Secretary receives a complete application from a test publisher, the Secretary selects experts in the field of educational testing and assessment who possess appropriate advanced degrees and experience in test development or psychometric research, or both, to advise the Secretary on the extent to which a test meets the criteria and requirements in § 462.13.

(2) The Secretary reviews and determines the suitability of a test only if an application—

(i) Is submitted by a test publisher;

(ii) Meets the deadline established by the Secretary;

(iii) Includes a test that—

(A) Has two or more secure, parallel, equated forms of the same test—either traditional paper and pencil or computer-administered instruments—for which forms are constructed prior to administration to examinees; or

(B) Is an adaptive test that uses computerized algorithms for selecting and administering items in real time; however, for such an instrument, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing;

(iv) Includes a test that samples one or more of the major content domains of the NRS educational functioning levels of ABE, ASE or ESL with sufficient numbers of questions to represent adequately the domain or domains; and

(v) Includes the information prescribed by the Secretary, including the information in § 462.11 of this part.

(b) *Secretary's determination.* (1) The Secretary determines whether a test meets the criteria and requirements in § 462.13 after taking into account the advice of the experts described in paragraph (a)(1) of this section.

(2) For tests that contain multiple sub-tests measuring content domains

other than those of the NRS educational functioning levels, the Secretary determines the suitability of only those sub-tests covering the domains of the NRS educational functioning levels.

(c) *Suitable tests.* If the Secretary determines that a test satisfies the criteria and requirements in §462.13 and, therefore, is suitable for use in the NRS, the Secretary—

(1) Notifies the test publisher of the Secretary's decision; and

(2) Annually publishes in the FEDERAL REGISTER and posts on the Internet at *www.nrsweb.org* a list of the names of tests and test forms and the educational functioning levels the tests are suitable to measure in the NRS. A copy of the list is also available from the U.S. Department of Education, Office of Career, Technical, and Adult Education, Division of Adult Education and Literacy, 400 Maryland Avenue SW., Room 11152, Potomac Center Plaza, Washington, DC 20202–7240.

(d) *Unsuitable tests.* (1) If the Secretary determines that a test does not satisfy the criteria and requirements in §462.13 and, therefore, is not suitable for use in the NRS, the Secretary notifies the test publisher of the Secretary's decision and of the reasons why the test does not meet those criteria and requirements.

(2) The test publisher may resubmit an application to have the suitability of its test determined by the Secretary under this part on October 1 in the year immediately following the year in which the Secretary notifies the publisher.

(i) An analysis of why the information and documentation submitted meet the criteria and requirements in §462.13, notwithstanding the Secretary's earlier decision to the contrary; and

(ii) Any additional documentation and information that address the Secretary's reasons for determining that the test was unsuitable.

(3) The Secretary reviews the additional information submitted by the test publisher and makes a final determination regarding the suitability of the test for use in the NRS.

(i) If the Secretary's decision is unchanged and the test remains unsuitable for use in the NRS, the Secretary notifies the test publisher, and this action concludes the review process.

(ii) If the Secretary's decision changes and the test is determined to be suitable for use in the NRS, the Secretary follows the procedures in paragraph (c) of this section.

(e) *Revocation.* (1) The Secretary's determination regarding the suitability of a test may be revoked if the Secretary determines that—

(i) The information the publisher submitted as a basis for the Secretary's review of the test was inaccurate; or

(ii) A test has been substantially revised—for example, by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms or sub-tests, or number of hours between pre- and post-testing.

(2) The Secretary notifies the test publisher of the—

(i) Secretary's decision to revoke the determination that the test is suitable for use in the NRS; and

(ii) Reasons for the Secretary's revocation.

(3) Within 30 days after the Secretary notifies a test publisher of the decision to revoke a determination that a test is suitable for use in the NRS, the test publisher may request that the Secretary reconsider the decision. This request must be accompanied by documentation and information that address the Secretary's reasons for revoking the determination that the test is suitable for use in the NRS.

(4) The Secretary reviews the information submitted by the test publisher and makes a final determination regarding the suitability of the test for use in the NRS.

(5) If the Secretary revokes the determination regarding the suitability of a test, the Secretary publishes in the FEDERAL REGISTER and posts on the Internet at *www.nrsweb.org* a notice of that revocation along with the date by which States and eligible providers must stop using the revoked test. A copy of the notice of revocation is also available from the U.S. Department of Education, Office of Career, Technical, and Adult Education, Division of Adult Education and Literacy, 400 Maryland

Avenue SW., Room 11152, Potomac Center Plaza, Washington, DC 20202–7240.

(Authority: 29 U.S.C. 3292)

[73 FR 2315, Jan. 14, 2008, as amended at 81 FR 55552, Aug. 19, 2016]

§ 462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?

In order for the Secretary to consider a test suitable for use in the NRS, the test or the test publisher, if applicable, must meet the following criteria and requirements:

(a) The test must measure the NRS educational functioning levels of members of the adult education population.

(b) The test must sample one or more of the major content domains of the NRS educational functioning levels of ABE, ASE or ESL with sufficient numbers of questions to adequately represent the domain or domains.

(c)(1) The test must meet all applicable and feasible standards for test construction and validity provided in the 1999 edition of the *Standards for Educational and Psychological Testing*, prepared by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Psychological Association, Inc., 750 First Street, NE., Washington, DC 20002. You may inspect a copy at the Department of Education, room 11159, 550 12th Street, SW., Washington, DC 20202 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) If requested by the Secretary, a test publisher must explain why it believes that certain standards in the 1999 edition of the *Standards for Educational and Psychological Testing* were not applicable or were not feasible to meet.

(d) The test must contain the publisher's guidelines for retesting, including time between test-taking, which are accompanied by appropriate justification.

(e) The test must—

(1) Have two or more secure, parallel, equated forms of the same test—either traditional paper and pencil or computer administered instruments—for which forms are constructed prior to administration to examinees; or

(2) Be an adaptive test that uses computerized algorithms for selecting and administering items in real time; however, for such an instrument, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing. Scores associated with these alternate administrations must be equivalent in meaning.

(f) For a test that has been modified for individuals with disabilities, the test publisher must—

(1) Provide documentation that it followed the guidelines provided in the Testing Individuals With Disabilities section of the 1999 edition of the *Standards for Educational and Psychological Testing;*

(2) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance; and

(3)(i) Recommend educational functioning levels based on the information obtained from adult education students who participated in the pilot or field test and who have the disability for which the test has been modified; and

(ii) Provide documentation of the adequacy of the procedures used to translate the performance of adult education students with the disability for whom the test has been modified to an estimate of the examinees' standing with respect to the NRS educational functioning levels.

(Authority: 29 U.S.C. 3292)

[73 FR 2315, Jan. 14, 2008, as amended at 81 FR 55552, Aug. 19, 2016]

§ 462.14 How often and under what circumstances must a test be reviewed by the Secretary?

(a) The Secretary's determination that a test is suitable for use in the NRS is in effect for a period of seven years from the date of the Secretary's written notification to the test publisher, unless otherwise indicated by the Secretary. After that time, if the test publisher wants the test to be used in the NRS, the test must be reviewed again by the Secretary so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(b) If a test that the Secretary has determined is suitable for use in the NRS is substantially revised—for example, by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms, subtests, or number of hours between pre- and post-testing—and the test publisher wants the test to continue to be used in the NRS, the test publisher must submit, as provided in § 462.11(j)(4), the substantially revised test or version of the test to the Secretary for review so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

(Authority: 29 U.S.C. 3292)

[73 FR 2315, Jan. 14, 2008, as amended at 81 FR 55552, Aug. 19, 2016]

Subpart C [Reserved]

Subpart D—What Requirements Must States and Local Eligible Providers Follow When Measuring Educational Gain?

§ 462.40 Must a State have an assessment policy?

(a) A State must have a written assessment policy that its local eligible providers must follow in measuring educational gain and reporting data in the NRS.

(b) A State must submit its assessment policy to the Secretary for review and approval at the time it submits its annual statistical report for the NRS.

(c) The State's assessment policy must—

(1) Include a statement requiring that local eligible providers measure the educational gain of all students who receive 12 hours or more of instruction in the State's adult education program with a test that the Secretary has determined is suitable for use in the NRS;

(2) Identify the pre- and post-tests that the State requires eligible providers to use to measure the educational functioning level gain of ABE, ASE, and ESL students;

(3)(i) Indicate when, in calendar days or instructional hours, eligible providers must administer pre- and post-tests to students;

(ii) Ensure that the time for administering the post-test is long enough after the pre-test to allow the test to measure educational functioning level gains according to the test publisher's guidelines; and

(iii) Specify a standard for the percentage of students to be pre- and post-tested.

(4) Specify the score ranges tied to educational functioning levels for placement and for reporting gains for accountability;

(5) Identify the skill areas the State intends to require local eligible providers to assess in order to measure educational gain;

(6) Include the guidance the State provides to local eligible providers on testing and placement of an individual with a disability or an individual who is unable to be tested because of a disability;

(7) Describe the training requirements that staff must meet in order to be qualified to administer and score each test selected by the State to measure the educational gains of students;

(8) Identify the alternate form or forms of each test that local eligible providers must use for post-testing;

(9) Indicate whether local eligible providers must use a locator test for guidance on identifying the appropriate pre-test;

(10) Describe the State's policy for the initial placement of a student at each NRS educational functioning level using test scores;

(11) Describe the State's policy for using the post-test for measuring educational gain and for advancing students across educational functioning levels;

(12) Describe the pre-service and in-service staff training that the State or local eligible providers will provide, including training—

(i) For staff who either administer or score each of the tests used to measure educational gain;

(ii) For teachers and other local staff involved in gathering, analyzing, compiling, and reporting data for the NRS; and

(iii) That includes the following topics:

(A) NRS policy, accountability policies, and the data collection process.

(B) Definitions of measures.

(C) Conducting assessments; and

(13) Identify the State or local agency responsible for providing pre- and in-service training.

(Approved by the Office of Management and Budget under control number 1830–0027)

(Authority: 29 U.S.C. 3292)

[73 FR 2315, Jan. 14, 2008, as amended at 81 FR 55552, Aug. 19, 2016]

§ 462.41 How must tests be administered in order to accurately measure educational gain?

(a) *General.* A local eligible provider must measure the educational gains of students using only tests that the Secretary has determined are suitable for use in the NRS and that the State has identified in its assessment policy.

(b) *Pre-test.* A local eligible provider must—

(1) Administer a pre-test to measure a student's educational functioning level at intake, or as soon as possible thereafter;

(2) Administer the pre-test to students at a uniform time, according to the State's assessment policy; and

(3) Administer pre-tests to students in the skill areas identified in the State's assessment policy.

(c) *Post-test.* A local eligible provider must—

(1) Administer a post-test to measure a student's educational functioning level after a set time period or number of instructional hours;

(2) Administer the post-test to students at a uniform time, according to the State's assessment policy;

(3)(i) Administer post-tests with a secure, parallel, equated form of the same test—either traditional paper and pencil or computer-administered instruments—for which forms are constructed prior to administration to examinees to pre-test and determine the initial placement of students; or

(ii) Administer post-tests with an adaptive test that uses computerized algorithms for selecting and administering items in real time; however, for such an instrument, the size of the item pool and the method of item selection must ensure negligible overlap in items across pre- and post-testing; and

(4) Administer post-tests to students in the same skill areas as the pre-test.

(d) *Other requirements.* (1) A local eligible provider must administer a test using only staff who have been trained to administer the test.

(2) A local eligible provider may use the results of a test in the NRS only if the test was administered in a manner that is consistent with the State's assessment policy and the test publisher's guidelines.

(Approved by the Office of Management and Budget under control number 1830–0027)

(Authority: 29 U.S.C. 3292)

[73 FR 2315, Jan. 14, 2008, as amended at 81 FR 55553, Aug. 19, 2016]

§ 462.42 How are tests used to place students at an NRS educational functioning level?

(a) A local eligible provider must use the results of the pre-test described in § 462.41(b) to initially place students at the appropriate NRS educational functioning level.

(b) A local eligible provider must use the results of the post-test described in § 462.41(c)—

(1) To determine whether students have completed one or more educational functioning levels or are progressing within the same level; and

(2) To place students at the appropriate NRS educational functioning level.

(c)(1) States and local eligible providers are not required to use all of the

skill areas described in the NRS educational functioning levels to place students.

(2) States and local eligible providers must test and report on the skill areas most relevant to the students' needs and to the programs' curriculum.

(d)(1) If a State's assessment policy requires a local eligible provider to test a student in multiple skill areas and the student will receive instruction in all of the skill areas, the local eligible provider must place the student in an educational functioning level that is equivalent to the student's lowest test score for any of the skill areas tested under § 462.41(b) and (c).

(2) If a State's assessment policy requires a local eligible provider to test a student in multiple skill areas, but the student will receive instruction in fewer than all of the skill areas, the local eligible provider must place the student in an educational functioning level that is equivalent to the student's lowest test score for any of the skill areas—

(i) Tested under § 462.41(b) and (c); and

(ii) In which the student will receive instruction.

(Approved by the Office of Management and Budget under control number 1830–0027)

(Authority: 29 U.S.C. 3292)

[73 FR 2315, Jan. 14, 2008, as amended at 81 FR 55553, Aug. 19, 2016]

§§ 462.43–462.44 [Reserved]

PART 463—ADULT EDUCATION AND FAMILY LITERACY ACT

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Sec.

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Subpart K [Reserved]

AUTHORITY: 29 U.S.C. 102 and 103, unless otherwise noted.

SOURCE: 81 FR 55553, Aug. 19, 2016, unless otherwise noted.

Subpart A—Adult Education General Provisions

§ 463.1 What is the purpose of the Adult Education and Family Literacy Act?

The purpose of the Adult Education and Family Literacy Act (AEFLA) is to create a partnership among the Federal Government, States, and localities to provide, on a voluntary basis, adult education and literacy activities, in order to—

(a) Assist adults to become literate and obtain the knowledge and skills necessary for employment and economic self-sufficiency;

(b) Assist adults who are parents or family members to obtain the education and skills that—

(1) Are necessary to becoming full partners in the educational development of their children; and

(2) Lead to sustainable improvements in the economic opportunities for their family;

(c) Assist adults in attaining a secondary school diploma or its recognized equivalent and in the transition to postsecondary education and training, through career pathways; and

(d) Assist immigrants and other individuals who are English language learners in—

(1) Improving their—

(i) Reading, writing, speaking, and comprehension skills in English; and

(ii) Mathematics skills; and

(2) Acquiring an understanding of the American system of Government, individual freedom, and the responsibilities of citizenship.

(Authority: 29 U.S.C. 3271)

§ 463.2 What regulations apply to the Adult Education and Family Literacy Act programs?

The following regulations apply to the Adult Education and Family Literacy Act programs:

(a) The following Education Department General Administrative Regulations (EDGAR):

(1) 34 CFR part 75 (Direct Grant Programs), except that 34 CFR 75.720(b), regarding the frequency of certain reports, does not apply.

(2) 34 CFR part 76 (State-Administered Programs), except that 34 CFR 76.101 (The general State application) does not apply.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 86 (Drug and Alcohol Prevention).

(8) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(b) The regulations in 34 CFR part 462.

(c) The regulations in 34 CFR part 463.

§ 463.3 What definitions apply to the Adult Education and Family Literacy Act programs?

Definitions in the Workforce Innovation and Opportunity Act. The following terms are defined in Sections 3, 134, 203, and 225 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102, 3174, 3272, and 3305):

Adult Education
Adult Education and Literacy Activities
Basic Skills Deficient
Career Pathway
Core Program
Core Program Provision
Correctional Institution
Criminal Offender
Customized Training
Eligible Agency
Eligible Individual
Eligible Provider
English Language Acquisition Program
English Language Learner
Essential Components of Reading
Family Literacy Activities
Governor
Individual with a Barrier to Employment
Individual with a Disability
Institution of Higher Education
Integrated Education and Training
Integrated English Literacy and Civics Education
Literacy
Local Educational Agency
On-the-Job Training
Outlying Area
Postsecondary Educational Institution
State
Training Services
Workplace Adult Education and Literacy Activities
Workforce Preparation Activities

Definitions in EDGAR. The following terms are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Contract
Department
ED
EDGAR
Fiscal Year
Grant
Grantee
Nonprofit
Private
Project
Project Period
Public
Secretary
Subgrant
Subgrantee

Other Definitions. The following definitions also apply:

Act means the Workforce Innovation and Opportunity Act, Public Law 113–128.

Concurrent enrollment or *co-enrollment* refers to enrollment by an eligible individual in two or more of the six core programs administered under the Act.

Digital literacy means the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.

Peer tutoring means an instructional model that utilizes one institutionalized individual to assist in providing or enhancing learning opportunities for other institutionalized individuals. A peer tutoring program must be structured and overseen by educators who assist with training and supervising tutors, setting educational goals, establishing an individualized plan of instruction, and monitoring progress.

Re-entry and *post-release services* means services provided to a formerly incarcerated individual upon or shortly after release from a correctional institution that are designed to promote successful adjustment to the community and prevent recidivism. Examples include education, employment services, substance abuse treatment, housing support, mental and physical health care, and family reunification services.

Title means title II of the Workforce Innovation and Opportunity Act, the Adult Education and Family Literacy Act, Public Law 113–128.

Subpart B [Reserved]

Subpart C—How Does a State Make an Award to Eligible Providers?

§ 463.20 What is the process that the eligible agency must follow in awarding grants or contracts to eligible providers?

(a) From grant funds made available under section 222(a)(1) of the Act, each eligible agency must award competitive multiyear grants or contracts to

eligible providers within the State or outlying area to enable the eligible providers to develop, implement, and improve adult education and literacy activities within the State or outlying area.

(b) The eligible agency must require that each eligible provider receiving a grant or contract use the funding to establish or operate programs that provide adult education and literacy activities, including programs that provide such activities concurrently.

(c) In conducting the competitive grant process, the eligible agency must ensure that—

(1) All eligible providers have direct and equitable access to apply and compete for grants or contracts;

(2) The same grant or contract announcement and application processes are used for all eligible providers in the State or outlying area; and

(3) In awarding grants or contracts to eligible providers for adult education and literacy activities, funds shall not be used for the purpose of supporting or providing programs, services, or activities for individuals who are not eligible individuals as defined in the Act, except that such agency may use such funds for such purpose if such programs, services, or activities are related to family literacy activities. Prior to providing family literacy activities for individuals who are not eligible individuals, an eligible provider shall attempt to coordinate with programs and services that do not receive funding under this title.

(d) In awarding grants or contracts for adult education and literacy activities to eligible providers, the eligible agency must consider the following:

(1) The degree to which the eligible provider would be responsive to—

(i) Regional needs as identified in the local workforce development plan; and

(ii) Serving individuals in the community who were identified in such plan as most in need of adult education and literacy activities, including individuals who—

(A) Have low levels of literacy skills; or

(B) Are English language learners;

(2) The ability of the eligible provider to serve eligible individuals with disabilities, including eligible individuals with learning disabilities;

(3) The past effectiveness of the eligible provider in improving the literacy of eligible individuals, especially those individuals who have low levels of literacy, and the degree to which those improvements contribute to the eligible agency meeting its State-adjusted levels of performance for the primary indicators of performance described in § 677.155;

(4) The extent to which the eligible provider demonstrates alignment between proposed activities and services and the strategy and goals of the local plan under section 108 of the Act, as well as the activities and services of the one-stop partners;

(5) Whether the eligible provider's program—

(i) Is of sufficient intensity and quality, and based on the most rigorous research available so that participants achieve substantial learning gains; and

(ii) Uses instructional practices that include the essential components of reading instruction;

(6) Whether the eligible provider's activities, including whether reading, writing, speaking, mathematics, and English language acquisition instruction delivered by the eligible provider, are based on the best practices derived from the most rigorous research available, including scientifically valid research and effective educational practice;

(7) Whether the eligible provider's activities effectively use technology, services and delivery systems, including distance education, in a manner sufficient to increase the amount and quality of learning, and how such technology, services, and systems lead to improved performance;

(8) Whether the eligible provider's activities provide learning in context, including through integrated education and training, so that an individual acquires the skills needed to transition to and complete postsecondary education and training programs, obtain and advance in employment leading to economic self-sufficiency, and to exercise the rights and responsibilities of citizenship;

(9) Whether the eligible provider's activities are delivered by instructors,

counselors, and administrators who meet any minimum qualifications established by the State, where applicable, and who have access to high-quality professional development, including through electronic means;

(10) Whether the eligible provider coordinates with other available education, training, and social service resources in the community, such as by establishing strong links with elementary schools and secondary schools, postsecondary educational institutions, institutions of higher education, Local WDBs, one-stop centers, job training programs, and social service agencies, business, industry, labor organizations, community-based organizations, nonprofit organizations, and intermediaries, in the development of career pathways;

(11) Whether the eligible provider's activities offer the flexible schedules and coordination with Federal, State, and local support services (such as child care, transportation, mental health services, and career planning) that are necessary to enable individuals, including individuals with disabilities or other special needs, to attend and complete programs;

(12) Whether the eligible provider maintains a high-quality information management system that has the capacity to report measurable participant outcomes (consistent with section § 666.100) and to monitor program performance; and

(13) Whether the local area in which the eligible provider is located has a demonstrated need for additional English language acquisition programs and civics education programs.

(Authority: 29 U.S.C. 3321)

§ 463.21 What processes must be in place to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with a local plan under section 108 of WIOA?

(a) An eligible agency must establish, within its grant or contract competition, a process that provides for the submission of all applications for funds under AEFLA to the appropriate Local Boards.

(b) The process must include—

(1) Submission of the applications to the appropriate Local Board for its review for consistency with the local plan within the appropriate timeframe; and

(2) An opportunity for the local board to make recommendations to the eligible agency to promote alignment with the local plan.

(c) The eligible agency must consider the results of the review by the Local Board in determining the extent to which the application addresses the required considerations in § 463.20.

(Authority: 29 U.S.C. 3122(d)(11), 3321(e), 3322)

§ 463.22 What must be included in the eligible provider's application for a grant or contract?

(a) Each eligible provider seeking a grant or contract must submit an application to the eligible agency containing the information and assurances listed below, as well as any additional information required by the eligible agency, including:

(1) A description of how funds awarded under this title will be spent consistent with the requirements of title II of AEFLA;

(2) A description of any cooperative arrangements the eligible provider has with other agencies, institutions, or organizations for the delivery of adult education and literacy activities;

(3) A description of how the eligible provider will provide services in alignment with the local workforce development plan, including how such provider will promote concurrent enrollment in programs and activities under title I, as appropriate;

(4) A description of how the eligible provider will meet the State-adjusted levels of performance for the primary indicators of performance identified in the State's Unified or Combined State Plan, including how such provider will collect data to report on such performance indicators;

(5) A description of how the eligible provider will fulfill, as appropriate, required one-stop partner responsibilities to—

(i) Provide access through the one-stop delivery system to adult education and literacy activities;

(ii) Use a portion of the funds made available under the Act to maintain

the one-stop delivery system, including payment of the infrastructure costs for the one-stop centers, in accordance with the methods agreed upon by the Local Board and described in the memorandum of understanding or the determination of the Governor regarding State one-stop infrastructure funding;

(iii) Enter into a local memorandum of understanding with the Local Board, relating to the operations of the one-stop system;

(iv) Participate in the operation of the one-stop system consistent with the terms of the memorandum of understanding, and the requirements of the Act; and

(v) Provide representation to the State board;

(6) A description of how the eligible provider will provide services in a manner that meets the needs of eligible individuals;

(7) Information that addresses the 13 considerations listed in § 463.20; and

(8) Documentation of the activities required by § 463.21(b).

(b) [Reserved]

(Authority: 29 U.S.C. 3322)

§ 463.23 Who is eligible to apply for a grant or contract for adult education and literacy activities?

An organization that has demonstrated effectiveness in providing adult education and literacy activities is eligible to apply for a grant or contract. These organizations may include, but are not limited to:

(a) A local educational agency;

(b) A community-based organization or faith-based organization;

(c) A volunteer literacy organization;

(d) An institution of higher education;

(e) A public or private nonprofit agency;

(f) A library;

(g) A public housing authority;

(h) A nonprofit institution that is not described in any of paragraphs (a) through (g) of this section and has the ability to provide adult education and literacy activities to eligible individuals;

(i) A consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described in any of paragraphs (a) through (h) of this section; and

(j) A partnership between an employer and an entity described in any of paragraphs (a) through (i) of this section.

(Authority: 29 U.S.C. 3272(5))

§ 463.24 How must an eligible provider establish that it has demonstrated effectiveness?

(a) For the purposes of this section, an eligible provider must demonstrate past effectiveness by providing performance data on its record of improving the skills of eligible individuals, particularly eligible individuals who have low levels of literacy, in the content domains of reading, writing, mathematics, English language acquisition, and other subject areas relevant to the services contained in the State's application for funds. An eligible provider must also provide information regarding its outcomes for participants related to employment, attainment of secondary school diploma or its recognized equivalent, and transition to postsecondary education and training.

(b) There are two ways in which an eligible provider may meet the requirements in paragraph (a) of this section:

(1) An eligible provider that has been funded under title II of the Act must provide performance data required under section 116 to demonstrate past effectiveness.

(2) An eligible provider that has not been previously funded under title II of the Act must provide performance data to demonstrate its past effectiveness in serving basic skills deficient eligible individuals, including evidence of its success in achieving outcomes listed in paragraph (a) of this section.

(Authority: 29 U.S.C. 3272(5))

§ 463.25 What are the requirements related to local administrative cost limits?

Not more than five percent of a local grant to an eligible provider can be expended to administer a grant or contract under title II. In cases where five percent is too restrictive to allow for administrative activities, the eligible agency may increase the amount that can be spent on local administration. In such cases, the eligible provider

must negotiate with the eligible agency to determine an adequate level of funds to be used for non-instructional purposes.

(Authority: 29 U.S.C. 3323)

§ 463.26 What activities are considered local administrative costs?

An eligible provider receiving a grant or contract under this part may consider costs incurred in connection with the following activities to be administrative costs:

(a) Planning;

(b) Administration, including carrying out performance accountability requirements;

(c) Professional development;

(d) Providing adult education and literacy services in alignment with local workforce plans, including promoting co-enrollment in programs and activities under title I, as appropriate; and

(e) Carrying out the one-stop partner responsibilities described in § 678.420, including contributing to the infrastructure costs of the one-stop delivery system.

(Authority: 29 U.S.C. 3323, 3322, 3151)

Subpart D—What Are Adult Education and Literacy Activities?

§ 463.30 What are adult education and literacy programs, activities, and services?

The term ''adult education and literacy activities'' means programs, activities, and services that include:

(a) Adult education,

(b) Literacy,

(c) Workplace adult education and literacy activities,

(d) Family literacy activities,

(e) English language acquisition activities,

(f) Integrated English literacy and civics education,

(g) Workforce preparation activities, or

(h) Integrated education and training.

(Authority: 29 U.S.C. 3272(2))

§ 463.31 What is an English language acquisition program?

The term ''English language acquisition program'' means a program of instruction—

(a) That is designed to help eligible individuals who are English language learners achieve competence in reading, writing, speaking, and comprehension of the English language; and

(b) That leads to—

(1) Attainment of a secondary school diploma or its recognized equivalent; and

(2) Transition to postsecondary education and training; or

(3) Employment.

(Authority: 29 U.S.C. 3272(6))

§ 463.32 How does a program that is intended to be an English language acquisition program meet the requirement that the program leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment?

To meet the requirement in § 463.31(b) a program of instruction must:

(a) Have implemented State adult education content standards that are aligned with State-adopted challenging academic content standards, as adopted under the Elementary and Secondary Education Act of 1965, as amended (ESEA) as described in the State's Unified or Combined State Plan and as evidenced by the use of a State or local curriculum, lesson plans, or instructional materials that are aligned with the State adult education content standards; or

(b) Offer educational and career counseling services that assist an eligible individual to transition to postsecondary education or employment; or

(c) Be part of a career pathway.

(Authority: 29 U.S.C. 3112(b)(2)(D)(ii), 3272)

§ 463.33 What are integrated English literacy and civics education services?

(a) Integrated English literacy and civics education services are education services provided to English language learners who are adults, including professionals with degrees or credentials in their native countries, that enable

such adults to achieve competency in the English language and acquire the basic and more advanced skills needed to function effectively as parents, workers, and citizens in the United States.

(b) Integrated English literacy and civics education services must include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation and may include workforce training.

(Authority: 29 U.S.C. 3272(12))

§ 463.34 What are workforce preparation activities?

Workforce preparation activities include activities, programs, or services designed to help an individual acquire a combination of basic academic skills, critical thinking skills, digital literacy skills, and self-management skills, including competencies in:

(a) Utilizing resources;

(b) Using information;

(c) Working with others;

(d) Understanding systems;

(e) Skills necessary for successful transition into and completion of postsecondary education or training, or employment; and

(f) Other employability skills that increase an individual's preparation for the workforce.

(Authority: 29 U.S.C. 3272(17); P.L. 111–340)

§ 463.35 What is integrated education and training?

The term ''integrated education and training'' refers to a service approach that provides adult education and literacy activities concurrently and contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement.

(Authority: 29 U.S.C. 3272(11))

§ 463.36 What are the required components of an integrated education and training program funded under title II?

An integrated education and training program must include three components:

(a) Adult education and literacy activities as described in § 463.30.

(b) Workforce preparation activities as described in § 463.34.

(c) Workforce training for a specific occupation or occupational cluster which can be any one of the training services defined in section 134(c)(3)(D) of the Act.

(Authority: 29 U.S.C. 3272, 3174)

§ 463.37 How does a program providing integrated education and training under title II meet the requirement that the three required components be "integrated"?

In order to meet the requirement that the adult education and literacy activities, workforce preparation activities, and workforce training be integrated, services must be provided concurrently and contextually such that—

(a) Within the overall scope of a particular integrated education and training program, the adult education and literacy activities, workforce preparation activities, and workforce training:

(1) Are each of sufficient intensity and quality, and based on the most rigorous research available, particularly with respect to improving reading, writing, mathematics, and English proficiency of eligible individuals;

(2) Occur simultaneously; and

(3) Use occupationally relevant instructional materials.

(b) The integrated education and training program has a single set of learning objectives that identifies specific adult education content, workforce preparation activities, and workforce training competencies, and the program activities are organized to function cooperatively.

(Authority: 29 U.S.C. 3272)

§ 463.38 How does a program providing integrated education and training under title II meet the requirement that the integrated education and training program be "for the purpose of educational and career advancement"?

A provider meets the requirement that the integrated education and training program provided is for the purpose of educational and career advancement if:

(a) The adult education component of the program is aligned with the State's content standards for adult education as described in the State's Unified or Combined State Plan; and

(b) The integrated education and training program is part of a career pathway.

(Authority: 29 U.S.C. 3272, 3112)

Subpart E [Reserved]

Subpart F—What are Programs for Corrections Education and the Education of Other Institutionalized Individuals?

§ 463.60 What are programs for Corrections Education and the Education of other Institutionalized Individuals?

(a) Authorized under section 225 of the Act, programs for corrections education and the education of other institutionalized individuals require each eligible agency to carry out corrections education and education for other institutionalized individuals using funds provided under section 222 of the Act.

(b) The funds described in paragraph (a) of this section must be used for the cost of educational programs for criminal offenders in correctional institutions and other institutionalized individuals, including academic programs for—

(1) Adult education and literacy activities;

(2) Special education, as determined by the eligible agency;

(3) Secondary school credit;

(4) Integrated education and training;

(5) Career pathways;

(6) Concurrent enrollment;

(7) Peer tutoring; and

(8) Transition to re-entry initiatives and other post-release-services with the goal of reducing recidivism.

(Authority: 29 U.S.C. 3302, 3305)

§ 463.61 How does the eligible agency award funds to eligible providers under the program for Corrections Education and Education of other Institutionalized Individuals?

(a) States may award up to 20 percent of the 82.5 percent of the funds made available by the Secretary for local grants and contracts under section 231 of the Act for programs for corrections education and the education of other institutionalized individuals.

(b) The State must make awards to eligible providers in accordance with subpart C.

(Authority: 29 U.S.C. 3302, 3321)

§ 463.62 What is the priority for programs that receive funding through programs for Corrections Education and Education of other Institutionalized Individuals?

Each eligible agency using funds provided under Programs for Corrections Education and Education of Other Institutionalized Individuals to carry out a program for criminal offenders within a correctional institution must give priority to programs serving individuals who are likely to leave the correctional institution within five years of participation in the program.

(Authority: 29 U.S.C. 3305)

§ 463.63 How may funds under programs for Corrections Education and Education of other Institutionalized Individuals be used to support transition to re-entry initiatives and other post-release services with the goal of reducing recidivism?

Funds under Programs for Corrections Education and the Education of Other Institutionalized Individuals may be used to support educational programs for transition to re-entry initiatives and other post-release services with the goal of reducing recidivism. Such use of funds may include educational counseling or case work to support incarcerated individuals' transition to re-entry and other post-release services. Examples include assisting incarcerated individuals to develop plans for post-release education program participation, assisting students in identifying and applying for participation in post-release programs, and performing direct outreach to community-based program providers on behalf of re-entering students. Such funds may not be used for costs for participation in post-release programs or services.

(Authority: 29 U.S.C. 3305)

Subpart G—What Is the Integrated English Literacy and Civics Education Program?

§ 463.70 What is the Integrated English Literacy and Civics Education program?

(a) The Integrated English Literacy and Civics Education program refers to the use of funds provided under section 243 of the Act for education services for English language learners who are adults, including professionals with degrees and credentials in their native countries.

(b) The Integrated English Literacy and Civics Education program delivers educational services as described in § 463.33.

(c) Such educational services must be delivered in combination with integrated education and training activities as described in § 463.36.

(Authority: 29 U.S.C. 3272, 3333)

§ 463.71 How does the Secretary make an award under the Integrated English Literacy and Civics Education program?

(a) The Secretary awards grants under the Integrated English Literacy and Civics Education program to States that have an approved Unified State Plan in accordance with § 463.90 through § 463.145, or an approved Combined State Plan in accordance with § 463.90 through § 463.145.

(b) The Secretary allocates funds to States following the formula described in section 243(b) of the Act.

(1) Sixty-five percent is allocated on the basis of a State's need for integrated English literacy and civics education, as determined by calculating each State's share of a 10-year average of the data of the Office of Immigration Statistics of the Department of Homeland Security for immigrants admitted for legal permanent residence for the 10 most recent years; and

(2) Thirty-five percent is allocated on the basis of whether the State experienced growth, as measured by the average of the three most recent years for which the data of the Office of Immigration Statistics of the Department of Homeland Security for immigrants admitted for legal permanent residence are available.

(3) No State receives an allotment less than $60,000.

(Authority: 29 U.S.C. 3333)

§ 463.72 How does the eligible agency award funds to eligible providers for the Integrated English Literacy and Civics Education program?

States must award funds for the Integrated English Literacy and Civics Education program to eligible providers in accordance with subpart C.

(Authority: 29 U.S.C. 3321)

§ 463.73 What are the requirements for eligible providers that receive funding through the Integrated English Literacy and Civics Education program?

Eligible providers receiving funds through the Integrated English Literacy and Civics Education program must provide services that—

(a) Include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation; and

(b) Are designed to:

(1) Prepare adults who are English language learners for, and place such adults in, unsubsidized employment in in-demand industries and occupations that lead to economic self-sufficiency; and

(2) Integrate with the local workforce development system and its functions to carry out the activities of the program.

(Authority: 29 U.S.C. 3272, 3333)

§ 463.74 How does an eligible provider that receives funds through the Integrated English Literacy and Civics Education program meet the requirement to use funds for Integrated English Literacy and Civics Education in combination with integrated education and training activities?

An eligible provider that receives funds through the Integrated English Literacy and Civics Education program may meet the requirement to use funds for integrated English literacy and civics education in combination with integrated education and training activities by:

(a) Co-enrolling participants in integrated education and training as described in subpart D of this part that is provided within the local or regional workforce development area from sources other than section 243 of the Act; or

(b) Using funds provided under section 243 of the Act to support integrated education and training activities as described in subpart D of this part.

(Authority: 29 U.S.C. 3333, 3121, 3122, 3123)

§463.75 Who is eligible to receive education services through the Integrated English Literacy and Civics Education program?

Individuals who otherwise meet the definition of ''eligible individual'' and are English language learners, including professionals with degrees and credentials obtained in their native countries, may receive Integrated English Literacy and Civics Education services.

(Authority: 29 U.S.C. 3272)

Subpart H—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

AUTHORITY: Secs. 102, 103, and 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

SOURCE: 81 FR 56046, Aug. 19, 2016, unless otherwise noted.

§463.100 What are the purposes of the Unified and Combined State Plans?

(a) The Unified and Combined State Plans provide the framework for States to outline a strategic vision of, and goals for, how their workforce development systems will achieve the purposes of the Workforce Innovation and Opportunity Act (WIOA).

(b) The Unified and Combined State Plans serve as 4-year action plans to develop, align, and integrate the State's systems and provide a platform to achieve the State's vision and strategic and operational goals. A Unified or Combined State Plan is intended to:

(1) Align, in strategic coordination, the six core programs required in the Unified State Plan pursuant to §463.105(b), and additional Combined State Plan partner programs that may be part of the Combined State Plan pursuant to §463.140;

(2) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(3) Apply strategies for job-driven training consistently across Federal programs; and

(4) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs.

§463.105 What are the general requirements for the Unified State Plan?

(a) The Unified State Plan must be submitted in accordance with §463.130 and WIOA sec. 102(c), as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Governor of each State must submit, at a minimum, in accordance with §463.130, a Unified State Plan to the Secretary of Labor to be eligible to receive funding for the workforce development system's six core programs:

(1) The adult, dislocated worker, and youth programs authorized under subtitle B of title I of WIOA and administered by the U.S. Department of Labor (DOL);

(2) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by the U.S. Department of Education (ED);

(3) The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III and administered by DOL; and

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by title IV of WIOA and administered by ED.

(c) The Unified State Plan must outline the State's 4-year strategy for the core programs described in paragraph (b) of this section and meet the requirements of sec. 102(b) of WIOA, as

explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(d) The Unified State Plan must include strategic and operational planning elements to facilitate the development of an aligned, coordinated, and comprehensive workforce development system. The Unified State Plan must include:

(1) Strategic planning elements that describe the State's strategic vision and goals for preparing an educated and skilled workforce under sec. 102(b)(1) of WIOA. The strategic planning elements must be informed by and include an analysis of the State's economic conditions and employer and workforce needs, including education and skill needs.

(2) Strategies for aligning the core programs and Combined State Plan partner programs as described in § 463.140(d), as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA.

(3) Operational planning elements in accordance with sec. 102(b)(2) of WIOA that support the strategies for aligning the core programs and other resources available to the State to achieve the State's vision and goals and a description of how the State Workforce Development Board (WDB) will implement its functions, in accordance with sec. 101(d) of WIOA. Operational planning elements must include:

(i) A description of how the State strategy will be implemented by each core program's lead State agency;

(ii) State operating systems, including data systems, and policies that will support the implementation of the State's strategy identified in paragraph (d)(1) of this section;

(iii) Program-specific requirements for the core programs required by WIOA sec. 102(b)(2)(D);

(iv) Assurances required by sec. 102(b)(2)(E) of WIOA, including an assurance that the lead State agencies responsible for the administration of the core programs reviewed and commented on the appropriate operational planning of the Unified State Plan and approved the elements as serving the needs of the population served by such programs, and other assurances deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA;

(v) A description of joint planning and coordination across core programs, required one-stop partner programs, and other programs and activities in the Unified State Plan; and

(vi) Any additional operational planning requirements imposed by the Secretary of Labor or the Secretary of Education under sec. 102(b)(2)(C)(viii) of WIOA.

(e) All of the requirements in this subpart that apply to States also apply to outlying areas.

§ 463.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth programs that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 463.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under Workforce Innovation and Opportunity Act title II?

The program-specific requirements for the AEFLA program in title II that must be included in the Unified State Plan are described in secs. 102(b)(2)(C) and 102(b)(2)(D)(ii) of WIOA.

(a) With regard to the description required in sec. 102(b)(2)(D)(ii)(I) of WIOA pertaining to content standards, the Unified State Plan must describe how the eligible agency will, by July 1, 2016, align its content standards for adult education with State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended.

(b) With regard to the description required in sec. 102(b)(2)(C)(iv) of WIOA pertaining to the methods and factors the State will use to distribute funds under the core programs, for title II of

WIOA, the Unified State Plan must include—

(1) How the eligible agency will award multi-year grants on a competitive basis to eligible providers in the State; and

(2) How the eligible agency will provide direct and equitable access to funds using the same grant or contract announcement and application procedure.

§463.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?

The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III, is subject to requirements in sec. 102(b) of WIOA, including any additional requirements imposed by the Secretary of Labor under secs. 102(b)(2)(C)(viii) and 102(b)(2)(D)(iv) of WIOA, as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§463.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?

The program specific-requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended. All submission requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by sec. 102(b) of WIOA.

§463.130 What is the development, submission, and approval process of the Unified State Plan?

(a) The Unified State Plan described in §463.105 must be submitted in accordance with WIOA sec. 102(c), as explained in joint planning guidelines issued jointly by the Secretaries of Labor and Education.

(b) A State must submit its Unified State Plan to the Secretary of Labor pursuant to a process identified by the Secretary.

(1) The initial Unified State Plan must be submitted no later than 120 days prior to the commencement of the second full program year of WIOA.

(2) Subsequent Unified State Plans must be submitted no later than 120 days prior to the end of the 4-year period covered by a preceding Unified State Plan.

(3) For purposes of paragraph (b) of this section, ''program year'' means July 1 through June 30 of any year.

(c) The Unified State Plan must be developed with the assistance of the State WDB, as required by 20 CFR 679.130(a) and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(d) The State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission.

(1) The opportunity for public comment must include an opportunity for comment by representatives of Local WDBs and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the ''Sunshine Provision'' of WIOA in sec. 101(g), the State WDB must make information regarding the Unified State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Unified State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(e) Upon receipt of the Unified State Plan from the State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries.

(f) The Unified State Plan is subject to the approval of both the Secretary

of Labor and the Secretary of Education.

(g) Before the Secretaries of Labor and Education approve the Unified State Plan, the vocational rehabilitation services portion of the Unified State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(h) The Secretaries of Labor and Education will review and approve the Unified State Plan within 90 days of receipt by the Secretary of Labor, unless the Secretary of Labor or the Secretary of Education determines in writing within that period that:

(1) The plan is inconsistent with a core program's requirements;

(2) The Unified State Plan is inconsistent with any requirement of sec. 102 of WIOA; or

(3) The plan is incomplete or otherwise insufficient to determine whether it is consistent with a core program's requirements or other requirements of WIOA.

(i) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (h) of this section within 90 days of the receipt by the Secretaries, the Unified State Plan will be considered approved.

§ 463.135 What are the requirements for modification of the Unified State Plan?

(a) In addition to the required modification review set forth in paragraph (b) of this section, a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the plan.

(b) Modifications are required, at a minimum:

(1) At the end of the first 2-year period of any 4-year State Plan, wherein the State WDB must review the Unified State Plan, and the Governor must submit modifications to the plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Unified State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 463.170(b), the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 463.130(d) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretaries of Labor and Education, based on the approval standards applicable to the original Unified State Plan under § 463.130. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the plan described in sec. 102(b)(2)(D)(iii) of WIOA.

§ 463.140 What are the general requirements for submitting a Combined State Plan?

(a) A State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan described in §§ 463.105 through 463.125.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is, in accordance with WIOA sec. 103(c), approved or deemed complete under the law relating to the program will not be required to submit any other plan or application in order to receive Federal funds to carry out the core programs or the program or activities described under paragraph (d) of this section that are covered by the Combined State Plan.

(c) If a State develops a Combined State Plan, it must be submitted in accordance with the process described in § 463.143.

(d) If a State chooses to submit a Combined State Plan, the plan must include the six core programs and one or more of the Combined State Plan

partner programs and activities described in sec. 103(a)(2) of WIOA. The Combined State Plan partner programs and activities that may be included in the Combined State Plan are:

(1) Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(2) Temporary Assistance for Needy Families or TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o));

(5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(6) Services for veterans authorized under chapter 41 of title 38 United States Code;

(7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development (HUD);

(10) Employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*); and

(11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532).

(e) A Combined State Plan must contain:

(1) For the core programs, the information required by sec. 102(b) of WIOA and §§463.105 through 463.125, as explained in the joint planning guidelines issued by the Secretaries;

(2) For the Combined State Plan partner programs and activities, except as described in paragraph (h) of this section, the information required by the law authorizing and governing that program to be submitted to the appropriate Secretary, any other applicable legal requirements, and any common planning requirements described in sec. 102(b) of WIOA, as explained in the joint planning guidelines issued by the Secretaries;

(3) A description of the methods used for joint planning and coordination among the core programs, and with the required one-stop partner programs and other programs and activities included in the State Plan; and

(4) An assurance that all of the entities responsible for planning or administering the programs described in the Combined State Plan have had a meaningful opportunity to review and comment on all portions of the plan.

(f) Each Combined State Plan partner program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

(g) For purposes of §§463.140 through 463.145 the term ''appropriate Secretary'' means the head of the Federal agency who exercises either plan or application approval authority for the program or activity under the Federal law authorizing the program or activity or, if there are no planning or application requirements, who exercises administrative authority over the program or activity under that Federal law.

(h) States that include employment and training activities carried out under the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 *et seq.*) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations.

(i) States that submit employment and training activities carried out by HUD under a Combined State Plan would submit any other required planning documents for HUD programs directly to HUD, according to the requirements of Federal law and regulations.

§ 463.143 What is the development, submission, and approval process of the Combined State Plan?

(a) For purposes of § 463.140(a), if a State chooses to develop a Combined State Plan it must submit the Combined State Plan in accordance with the requirements described below and sec. 103 of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Combined State Plan must be developed with the assistance of the State WDB, as required by 20 CFR 679.130(a) and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(c) The State must provide an opportunity for public comment on and input into the development of the Combined State Plan prior to its submission.

(1) The opportunity for public comment for the portions of the Combined State Plan that cover the core programs must include an opportunity for comment by representatives of Local WDBs and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the ''Sunshine Provision'' of WIOA in sec. 101(g), the State WDB must make information regarding the Combined State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Combined State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment on the portions of the plan covering core programs.

(3) The portions of the plan that cover the Combined State Plan partner programs are subject to any public comment requirements applicable to those programs.

(d) The State must submit to the Secretaries of Labor and Education and to the Secretary of the agency with responsibility for approving the program's plan or deeming it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity. Such submission must occur in accordance with a process identified by the relevant Secretaries in paragraph (a) of this section.

(e) The Combined State Plan will be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA.

(1) The portion of the Combined State Plan covering programs administered by the Departments of Labor and Education must be reviewed, and approved or disapproved, by the appropriate Secretary within 90 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State, consistent with paragraph (f) of this section. Before the Secretaries of Labor and Education approve the Combined State Plan, the vocational rehabilitation services portion of the Combined State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or deem complete a portion of the Combined State Plan for a program or activity described in § 463.140(d), that portion of the Combined State Plan must be reviewed, and approved, disapproved, or deemed complete, by the appropriate Secretary within 120 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State consistent with paragraph (f) of this section.

(f) The appropriate Secretaries will review and approve or deem complete the Combined State Plan within 90 or 120 days, as appropriate, as described in paragraph (e) of this section, unless the Secretaries of Labor and Education or appropriate Secretary have determined in writing within that period that:

(1) The Combined State Plan is inconsistent with the requirements of

the six core programs or the Federal laws authorizing or applicable to the program or activity involved, including the criteria for approval of a plan or application, or deeming the plan complete, if any, under such law;

(2) The portion of the Combined State Plan describing the six core programs or the program or activity described in paragraph (a) of this section involved does not satisfy the criteria as provided in sec. 102 or 103 of WIOA, as applicable; or

(3) The Combined State Plan is incomplete, or otherwise insufficient to determine whether it is consistent with a core program's requirements, other requirements of WIOA, or the Federal laws authorizing, or applicable to, the program or activity described in §463.140(d), including the criteria for approval of a plan or application, if any, under such law.

(g) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (f) of this section within the relevant period of time after submission of the Combined State Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(h) The Secretaries of Labor and Education's written determination of approval or disapproval regarding the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities described in §463.140(d) and included in the Combined State Plan.

(i) *Special rule*. In paragraphs (f)(1) and (3) of this section, the term ''criteria for approval of a plan or application,'' with respect to a State or a core program or a program under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*), includes a requirement for agreement between the State and the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance.

§463.145 What are the requirements for modifications of the Combined State Plan?

(a) For the core program portions of the Combined State Plan, modifications are required, at a minimum:

(1) By the end of the first 2-year period of any 4-year State Plan. The State WDB must review the Combined State Plan, and the Governor must submit modifications to the Combined State Plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Combined State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Combined State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in §463.170(b), the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(b) In addition to the required modification review described in paragraph (a)(1) of this section, a State may submit a modification of its Combined State Plan at any time during the 4-year period of the plan.

(c) For any Combined State Plan partner programs and activities described in §463.140(d) that are included in a State's Combined State Plan, the State—

(1) May decide if the modification requirements under WIOA sec. 102(c)(3) that apply to the core programs will apply to the Combined State Plan partner programs, as long as consistent with any other modification requirements for the programs, or may comply with the requirements applicable to only the particular program or activity; and

(2) Must submit, in accordance with the procedure described in §463.143, any modification, amendment, or revision required by the Federal law authorizing, or applicable to, the Combined

State Plan partner program or activity.

(i) If the underlying programmatic requirements change (*e.g.*, the authorizing statute is reauthorized) for Federal laws authorizing such programs, a State must either modify its Combined State Plan or submit a separate plan to the appropriate Federal agency in accordance with the new Federal law authorizing the Combined State Plan partner program or activity and other legal requirements applicable to such program or activity.

(ii) If the modification, amendment, or revision affects the administration of only that particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, modifications must be submitted for approval to only the appropriate Secretary, based on the approval standards applicable to the original Combined State Plan under § 463.143, if the State elects, or in accordance with the procedures and requirements applicable to the particular Combined State Plan partner program.

(3) A State also may amend its Combined State Plan to add a Combined State Plan partner program or activity described in § 463.140(d).

(d) Modifications of the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan as described in § 463.143(c) except that, if the modification, amendment, or revision affects the administration of a particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular Combined State Plan partner program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretaries of Labor and Education, based on the approval standards applicable to the original Combined State Plan under § 463.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

Subpart I—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

AUTHORITY: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

SOURCE: 81 FR 56051, Aug. 19, 2016, unless otherwise noted.

§ 463.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?

(a) *Participant.* A reportable individual who has received services other than the services described in paragraph (a)(3) of this section, after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a participant is a reportable individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) For the Workforce Innovation and Opportunity Act (WIOA) title I youth program, a participant is a reportable individual who has satisfied all applicable program requirements for the provision of services, including eligibility determination, an objective assessment, and development of an individual service strategy, and received 1 of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.

(3) The following individuals are not participants:

(i) Individuals in an Adult Education and Family Literacy Act (AEFLA) program who have not completed at least 12 contact hours;

(ii) Individuals who only use the self-service system.

(A) Subject to paragraph (a)(3)(ii)(B) of this section, self-service occurs when individuals independently access any

workforce development system program's information and activities in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies.

(B) Self-service does not uniformly apply to all virtually accessed services. For example, virtually accessed services that provide a level of support beyond independent job or information seeking on the part of an individual would not qualify as self-service.

(iii) Individuals who receive information-only services or activities, which provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives.

(4) Programs must include participants in their performance calculations.

(b) *Reportable individual.* An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the point after which a participant who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs authorized under WIOA title I, the AEFLA program authorized under WIOA title II, and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, exit date is the last date of service.

(i) The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services; services do not include self-service, information-only services or activities, or follow-up services. This also requires that there are no plans to provide the participant with future services.

(ii) [Reserved].

(2)(i) For the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program):

(A) The participant's record of service is closed in accordance with §463.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with §463.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the VR program if the participant's service record is closed because the participant has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

(3)(i) A State may implement a common exit policy for all or some of the core programs in WIOA title I and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, and any additional required partner program(s) listed in sec. 121(b)(1)(B) of WIOA that is under the authority of the U.S. Department of Labor (DOL).

(ii) If a State chooses to implement a common exit policy, the policy must require that a participant is exited only when all of the criteria in paragraph (c)(1) of this section are met for the WIOA title I core programs and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, as well as any additional required partner programs listed in sec. 121(b)(1)(B) of WIOA under the authority of DOL to which the common exit policy applies in which the participant is enrolled.

(d) *State.* For purposes of this part, other than in regard to sanctions or the statistical adjustment model, all references to ''State'' include the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau.

§ 463.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

(a) All States submitting either a Unified or Combined State Plan under §§ 463.130 and 463.143, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I; the AEFLA program authorized under WIOA title II; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(1) *Primary indicators of performance.* The six primary indicators of performance for the adult and dislocated worker programs, the AEFLA program, and the VR program are:

(i) The percentage of participants who are in unsubsidized employment during the second quarter after exit from the program;

(ii) The percentage of participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(iv)(A) The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program.

(B) A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program;

(v) The percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:

(A) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(B) Documented attainment of a secondary school diploma or its recognized equivalent;

(C) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards;

(D) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(E) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(vi) Effectiveness in serving employers.

(2) *Participants.* For purposes of the primary indicators of performance in paragraph (a)(1) of this section, ''participant'' will have the meaning given to it in § 463.150(a), except that—

(i) For purposes of determining program performance levels under indicators set forth in paragraphs (a)(1)(i) through (iv) and (vi) of this section, a ''participant'' does not include a participant who received services under sec. 225 of WIOA and exits such program while still in a correctional institution as defined in sec. 225(e)(1) of WIOA; and

(ii) The Secretaries of Labor and Education may, as needed and consistent with the Paperwork Reduction

Act (PRA), make further determinations as to the participants to be included in calculating program performance levels for purposes of any of the performance indicators set forth in paragraph (a)(1) of this section.

(b) The primary indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III.

(c) For the youth program authorized under WIOA title I, the primary indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program, except that a participant who has attained a secondary school diploma or its recognized equivalent is included as having attained a secondary school diploma or recognized equivalent only if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:

(i) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(ii) Documented attainment of a secondary school diploma or its recognized equivalent;

(iii) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is achieving the State unit's academic standards;

(iv) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(v) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(6) Effectiveness in serving employers.

§463.160 What information is required for State performance reports?

(a) The State performance report required by sec. 116(d)(2) of WIOA must be submitted annually using a template the Departments of Labor and Education will disseminate, and must provide, at a minimum, information on the actual performance levels achieved consistent with §463.175 with respect to:

(1) The total number of participants served, and the total number of participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec. 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators of performance for all of the core programs identified in §463.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators of performance consistent with § 463.155 for career services and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who attained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I, subtitle B programs;

(6) The amount of funds spent on career services and the amount of funds spent on training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career services and training services, respectively, during the most recent program year and the 3 preceding program years, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) Information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and eligible training provider (ETP) performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education, which may include information on reportable individuals as determined by the Secretaries of Labor and Education.

§ 463.165 May a State establish additional indicators of performance?

States may identify additional indicators of performance for the six core programs. If a State does so, these indicators must be included in the Unified or Combined State Plan.

§ 463.170 How are State levels of performance for primary indicators established?

(a) A State must submit in the State Plan expected levels of performance on the primary indicators of performance for each core program as required by sec. 116(b)(3)(A)(iii) of WIOA as explained in joint guidance issued by the Secretaries of Labor and Education.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 463.135 and 463.145.

(b) States must reach agreement on levels of performance with the Secretaries of Labor and Education for each indicator for each core program. These

are the negotiated levels of performance. The negotiated levels must be based on the following factors:

(1) How the negotiated levels of performance compare with State levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Labor and Education, subject to paragraph (d) of this section;

(3) How the negotiated levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the negotiated levels assist the State in meeting the performance goals established by the Secretaries of Labor and Education for the core programs in accordance with the Government Performance and Results Act of 1993, as amended.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries of Labor and Education. The model will be based on:

(1) Differences among States in actual economic conditions, including but not limited to unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including but not limited to:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;

(v) Low levels of literacy;

(vi) Low levels of English proficiency;

(vii) Disability status;

(viii) Homelessness;

(ix) Ex-offender status; and

(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to reach agreement on State negotiated levels for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise negotiated levels at the end of a program year based on actual economic conditions and characteristics of participants served, consistent with sec. 116(b)(3)(A)(vii) of WIOA.

(e) The negotiated levels revised at the end of the program year, based on the statistical adjustment model, are the adjusted levels of performance.

(f) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education.

§463.175 What responsibility do States have to use quarterly wage record information for performance accountability?

(a)(1) States must, consistent with State laws, use quarterly wage record information in measuring a State's performance on the primary indicators of performance outlined in §463.155 and a local area's performance on the primary indicators of performance identified in §463.205.

(2) The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of those participants through methods other than quarterly wage record information.

(b) ''Quarterly wage record information'' means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the individual, and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency (or appropriate State entity) to assist in carrying out the performance reporting requirements for WIOA core programs and ETPs. The

Governor or such agency (or appropriate State entity) is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability; and

(3) Protection against disaggregation that would violate applicable privacy standards.

§ 463.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?

A State will be subject to financial sanction under WIOA sec. 116(f) if it fails to:

(a) Submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) Meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

§ 463.185 When are sanctions applied for a State's failure to submit an annual performance report?

(a) Sanctions will be applied when a State fails to submit the State annual performance report required under sec. 116(d)(2) of WIOA. A State fails to report if the State either:

(1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or

(2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be applied if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

(1) Natural disasters;

(2) Unexpected personnel transitions; and

(3) Unexpected technology related issues.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

(1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its State annual performance report in order to not be considered failing to report.

(2) In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the State annual performance reports, the Secretaries of Labor and Education will review requests for extending the reporting deadline in accordance with the Departments of Labor and Education's procedures that will be established in guidance.

§ 463.190 When are sanctions applied for failure to achieve adjusted levels of performance?

(a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 463.170 to account for actual economic conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) Any State that fails to meet adjusted levels of performance for the primary indicators of performance outlined in § 463.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following three criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program;

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator. The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet:

(1) 90 percent of the overall State program score for the same core program;

(2) 90 percent of the overall State indicator score for the same primary indicator; or

(3) 50 percent of the same indicator score for the same program.

§463.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?

(a) The Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by five percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in §463.185;

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either §463.190(d)(1) for the second consecutive year as defined in §463.190; or

(3) The State's score on the same indicator for the same program falls below 50 percent under §463.190(d)(2) for the second consecutive year as defined in §463.190.

(b) If the State fails under paragraphs (a)(1) and either (a)(2) or (3) of this section in the same program year, the Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's Reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, depending on which program is impacted, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the Secretary of Labor imposes in accordance with the provisions of 20 CFR 683.800.

§463.200 What other administrative actions will be applied to States' performance requirements?

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall State program score and overall

State indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

§ 463.205 What performance indicators apply to local areas and what information must be included in local area performance reports?

(a) Each local area in a State under WIOA title I is subject to the same primary indicators of performance for the core programs for WIOA title I under § 463.155(a)(1) and (c) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 463.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments of Labor and Education will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must include:

(1) The actual results achieved under § 463.155 and the information required under § 463.160(a);

(2) The percentage of a local area's allotment under WIOA secs. 128(b) and 133(b) that the local area spent on administrative costs; and

(3) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(e) The disaggregation of data for the local area performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by DOL.

§ 463.210 How are local performance levels established?

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in § 463.170(c) must be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Used in order to reach agreement on local negotiated levels of performance for the upcoming program year; and

(3) Used to establish adjusted levels of performance at the end of a program year based on actual conditions, consistent with WIOA sec. 116(c)(3).

(b) Until all indicators for the core program in a local area have at least 2 years of complete data, the comparison of the actual results achieved to the adjusted levels of performance for each of the primary indicators only will be applied where there are at least 2 years of complete data for that program.

(c) The Governor, Local Workforce Development Board (WDB), and chief elected official must reach agreement on local negotiated levels of performance based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual economic conditions and characteristics of the participants served.

(d) The negotiations process described in paragraph (c) of this section must be developed by the Governor and disseminated to all Local WDBs and chief elected officials.

(e) The Local WDBs may apply performance measures to service providers that differ from the performance indicators that apply to the local area. These performance measures must be established after considering:

(1) The established local negotiated levels;

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

§463.215 Under what circumstances are local areas eligible for State Incentive Grants?

(a) The Governor is not required to award local incentive funds, but is authorized to provide incentive grants to local areas for performance on the primary indicators of performance consistent with WIOA sec. 134(a)(3)(A)(xi).

(b) The Governor may use non-Federal funds to create incentives for the Local WDBs to implement pay-for-performance contract strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the local areas served by the Local WDBs. Pay-for-performance contract strategies must be implemented in accordance with 20 CFR part 683, subpart E and §463.160.

§463.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the adjusted levels of performance agreed to under §463.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure to meet adjusted levels of performance for a local area before coming to agreement on the negotiated levels of performance for the local area.

(i) A State must establish the adjusted level of performance for a local area, using the statistical adjustment model described in §463.170(c).

(ii) At least 2 years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a local area.

(2) The technical assistance may include:

(i) Assistance in the development of a performance improvement plan;

(ii) The development of a modified local or regional plan; or

(iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the adjusted levels of performance agreed to under §463.210 for the same primary indicators of performance for the same core program authorized under WIOA title I for a third consecutive program year, the Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local WDB, consistent with the criteria established under 20 CFR 679.350;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

§463.225 Under what circumstances may local areas appeal a reorganization plan?

(a) The Local WDB and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local WDB and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local WDB and chief elected official to the Secretary of Labor under 20 CFR 683.650; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. NW., Washington DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local WDB and chief elected official, the Secretary of Labor must make a final decision within 30 days. In making this determination the Secretary of Labor may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor on the appeal becomes effective at the time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(C).

§ 463.230 What information is required for the eligible training provider performance reports?

(a) States are required to make available and publish annually using a template the Departments of Labor and Education will disseminate including through electronic means, the ETP performance reports for ETPs who provide services under sec. 122 of WIOA that are described in 20 CFR 680.400 through 680.530. These reports at a minimum must include, consistent with § 463.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants as defined by § 463.150(a) who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent) with respect to all individuals engaging in the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in § 463.155(a)(1)(i) through (iv) with respect to all individuals engaging in a program of study (or the equivalent).

(b) Apprenticeship programs registered under the National Apprenticeship Act are not required to submit ETP performance information. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide a mechanism of electronic access to the public ETP performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by DOL.

(e) The Governor may designate one or more State agencies such as a State Education Agency or other State Educational Authority to assist in overseeing ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated as responsible for administering the ETP list as provided under 20 CFR 680.500. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and unemployment insurance (UI) wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the ETP list and the information required to accompany the list, as provided in 20 CFR 680.500.

§463.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or the Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in either of the following programs administered by the Secretary of Labor or Secretary of Education: A WIOA title I core program; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; or the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(b) For individual records submitted to the Secretary of Labor, those records may be required to be integrated across all programs administered by the Secretary of Labor in one single file.

(c) States must comply with the requirements of sec. 116(d)(2) of WIOA as explained in guidance issued by the Departments of Labor and Education.

§463.240 What are the requirements for data validation of State annual performance reports?

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Labor or the Secretary of Education, to ensure that they submit complete annual performance reports that contain information that is valid and reliable, as required by WIOA sec. 116(d)(5).

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or the Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretaries of Labor and Education will provide training and technical assistance to States in order to implement this section. States must comply with the requirements of sec. 116(d)(5) of WIOA as explained in guidance.

Subpart J—Description of the One-Stop Delivery System Under Title I of the Workforce Innovation and Opportunity Act

AUTHORITY: Secs. 503, 107, 121, 134, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

SOURCE: 81 FR 56057, Aug. 19, 2016, unless otherwise noted.

§463.300 What is the one-stop delivery system?

(a) The one-stop delivery system brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(b) Title I of the Workforce Innovation and Opportunity Act (WIOA) assigns responsibilities at the local, State, and Federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that employers and individual customers can access.

(c) The system must include at least one comprehensive physical center in each local area as described in §463.305.

(d) The system may also have additional arrangements to supplement the comprehensive center. These arrangements include:

(1) An affiliated site or a network of affiliated sites, where one or more partners make programs, services, and activities available, as described in §463.310;

(2) A network of eligible one-stop partners, as described in §§ 463.400 through 463.410, through which each partner provides one or more of the programs, services, and activities that are linked, physically or technologically, to an affiliated site or access point that assures customers are provided information on the availability of career services, as well as other program services and activities, regardless of where they initially enter the public workforce system in the local area; and

(3) Specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors, or clusters.

(e) Required one-stop partner programs must provide access to programs, services, and activities through electronic means if applicable and practicable. This is in addition to providing access to services through the mandatory comprehensive physical one-stop center and any affiliated sites or specialized centers. The provision of programs and services by electronic methods such as Web sites, telephones, or other means must improve the efficiency, coordination, and quality of one-stop partner services. Electronic delivery must not replace access to such services at a comprehensive one-stop center or be a substitute to making services available at an affiliated site if the partner is participating in an affiliated site. Electronic delivery systems must be in compliance with the nondiscrimination and equal opportunity provisions of WIOA sec. 188 and its implementing regulations at 29 CFR part 38.

(f) The design of the local area's one-stop delivery system must be described in the Memorandum of Understanding (MOU) executed with the one-stop partners, described in § 463.500.

§ 463.305 What is a comprehensive one-stop center and what must be provided there?

(a) A comprehensive one-stop center is a physical location where job seeker and employer customers can access the programs, services, and activities of all required one-stop partners. A comprehensive one-stop center must have at least one title I staff person physically present.

(b) The comprehensive one-stop center must provide:

(1) Career services, described in § 463.430;

(2) Access to training services described in 20 CFR 680.200;

(3) Access to any employment and training activities carried out under sec. 134(d) of WIOA;

(4) Access to programs and activities carried out by one-stop partners listed in §§ 463.400 through 463.410, including the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service program); and

(5) Workforce and labor market information.

(c) Customers must have access to these programs, services, and activities during regular business days at a comprehensive one-stop center. The Local Workforce Development Board (WDB) may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State WDB will evaluate the hours of access to service as part of the evaluation of effectiveness in the one-stop certification process described in § 463.800(b).

(d) ''Access'' to each partner program and its services means:

(1) Having a program staff member physically present at the one-stop center;

(2) Having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or

(3) Making available a direct linkage through technology to program staff who can provide meaningful information or services.

(i) A ''direct linkage'' means providing direct connection at the one-stop center, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.

(ii) A ''direct linkage'' cannot exclusively be providing a phone number or

computer Web site or providing information, pamphlets, or materials.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§463.310 What is an affiliated site and what must be provided there?

(a) An affiliated site, or affiliate one-stop center, is a site that makes available to job seeker and employer customers one or more of the one-stop partners' programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program. The frequency of program staff's physical presence in the affiliated site will be determined at the local level. Affiliated sites are access points in addition to the comprehensive one-stop center(s) in each local area. If used by local areas as a part of the service delivery strategy, affiliate sites must be implemented in a manner that supplements and enhances customer access to services.

(b) As described in §463.315, Wagner-Peyser Act employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local WDBs, must examine lease agreements and property holdings throughout the one-stop delivery system in order to use property in an efficient and effective way. Where necessary and appropriate, States and Local WDBs must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser Act employment services are colocated as soon as reasonably possible. These steps must be included in the State Plan.

(d) All affiliated sites must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§463.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?

(a) Separate stand-alone Wagner-Peyser Act Employment Service offices are not permitted under WIOA, as also described in 20 CFR 652.202.

(b) If Wagner-Peyser Act employment services are provided at an affiliated site, there must be at least one or more other partners in the affiliated site with a physical presence of combined staff more than 50 percent of the time the center is open. Additionally, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. If Wagner-Peyser Act employment services and any of these 3 programs are provided at an affiliated site, an additional partner or partners must have a presence of combined staff in the center more than 50 percent of the time the center is open.

§463.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

Any network of one-stop partners or specialized centers, as described in §463.300(d)(3), must be connected to the comprehensive one-stop center and any appropriate affiliate one-stop centers, for example, by having processes in place to make referrals to these centers and the partner programs located in them. Wagner-Peyser Act employment services cannot stand alone in a specialized center. Just as described in §463.315 for an affiliated site, a specialized center must include other programs besides Wagner-Peyser Act employment services, local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation.

§463.400 Who are the required one-stop partners?

(a) Section 121(b)(1)(B) of WIOA identifies the entities that are required partners in the local one-stop delivery systems.

(b) The required partners are the entities responsible for administering the

following programs and activities in the local area:

(1) Programs authorized under title I of WIOA, including:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) YouthBuild;

(vi) Native American programs; and

(vii) Migrant and seasonal farmworker programs;

(2) The Wagner-Peyser Act Employment Service program authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), as amended by WIOA title III;

(3) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA;

(4) The Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*), as amended by WIOA title IV;

(5) The Senior Community Service Employment Program authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(6) Career and technical education programs at the postsecondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(7) Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(8) Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.;

(9) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*);

(10) Employment and training activities carried out by the Department of Housing and Urban Development;

(11) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(12) Programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532); and

(13) Temporary Assistance for Needy Families (TANF) authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), unless exempted by the Governor under § 463.405(b).

§ 463.405 Is Temporary Assistance for Needy Families a required one-stop partner?

(a) Yes, TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), is a required partner.

(b) The Governor may determine that TANF will not be a required partner in the State, or within some specific local areas in the State. In this instance, the Governor must notify the Secretaries of the U.S. Departments of Labor and Health and Human Services in writing of this determination.

(c) In States, or local areas within a State, where the Governor has determined that TANF is not required to be a partner, local TANF programs may still work in collaboration or partnership with the local one-stop centers to deliver employment and training services to the TANF population unless inconsistent with the Governor's direction.

§ 463.410 What other entities may serve as one-stop partners?

(a) Other entities that carry out a workforce development program, including Federal, State, or local programs and programs in the private sector, may serve as additional partners in the one-stop delivery system if the Local WDB and chief elected official(s) approve the entity's participation.

(b) Additional partners may include, but are not limited to:

(1) Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under sec. 1148 of the Social Security Act (42 U.S.C. 1320b–19);

(2) Employment and training programs carried out by the Small Business Administration;

(3) Supplemental Nutrition Assistance Program (SNAP) employment and training programs, authorized under secs. 6(d)(4) and 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Client Assistance Program authorized under sec. 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732);

(5) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(6) Other appropriate Federal, State or local programs, including, but not limited to, employment, education, and training programs provided by public libraries or in the private sector.

§463.415 What entity serves as the one-stop partner for a particular program in the local area?

(a) The entity that carries out the program and activities listed in §463.400 or §463.410, and therefore serves as the one-stop partner, is the grant recipient, administrative entity, or organization responsible for administering the funds of the specified program in the local area. The term ''entity'' does not include the service providers that contract with, or are subrecipients of, the local administrative entity. For programs that do not include local administrative entities, the responsible State agency must be the partner. Specific entities for particular programs are identified in paragraphs (b) through (e) of this section. If a program or activity listed in §463.400 is not carried out in a local area, the requirements relating to a required one-stop partner are not applicable to such program or activity in that local one-stop delivery system.

(b) For title II of WIOA, the entity or agency that carries out the program for the purposes of paragraph (a) of this section is the sole entity or agency in the State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. The State eligible entity or agency may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the VR program, authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agencies or designated State units specified under sec. 101(a)(2) of the Rehabilitation Act that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities.

(d) Under WIOA title I, the national programs, including Job Corps, the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs are required one-stop partners. The entity for the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs is the grantee of those respective programs. The entity for Job Corps is the Job Corps center.

(e) For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section is the eligible recipient or recipients at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. The eligible recipient at the postsecondary level may also request assistance from the State eligible agency in completing its responsibilities under paragraph (a) of this section.

§463.420 What are the roles and responsibilities of the required one-stop partners?

Each required partner must:

(a) Provide access to its programs or activities through the one-stop delivery system, in addition to any other appropriate locations;

(b) Use a portion of funds made available to the partner's program, to the extent consistent with the Federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 3474 (requiring, among other things, that costs are allowable, reasonable, necessary, and allocable), to:

(1) Provide applicable career services; and

(2) Work collaboratively with the State and Local WDBs to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner based on proportionate use and relative benefit received;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements in the Federal law authorizing the partner's program. (This is further described in § 463.700.)

(c) Enter into an MOU with the Local WDB relating to the operation of the one-stop delivery system that meets the requirements of § 463.500(b);

(d) Participate in the operation of the one-stop delivery system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; and

(e) Provide representation on the State and Local WDBs as required and participate in Board committees as needed.

§ 463.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?

(a) The applicable career services to be delivered by required one-stop partners are those services listed in § 463.430 that are authorized to be provided under each partner's program.

(b) One-stop centers provide services to individual customers based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services.

§ 463.430 What are career services?

Career services, as identified in sec. 134(c)(2) of WIOA, consist of three types:

(a) Basic career services must be made available and, at a minimum, must include the following services, as consistent with allowable program activities and Federal cost principles:

(1) Determinations of whether the individual is eligible to receive assistance from the adult, dislocated worker, or youth programs;

(2) Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system. For the TANF program, States must provide individuals with the opportunity to initiate an application for TANF assistance and non-assistance benefits and services, which could be implemented through the provision of paper application forms or links to the application Web site;

(3) Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs;

(4) Labor exchange services, including—

(i) Job search and placement assistance, and, when needed by an individual, career counseling, including—

(A) Provision of information on in-demand industry sectors and occupations (as defined in sec. 3(23) of WIOA); and

(B) Provision of information on non-traditional employment; and

(ii) Appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through the one-stop delivery system;

(5) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, when appropriate, other workforce development programs;

(6) Provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in labor market areas;

(ii) Information on job skills necessary to obtain the vacant jobs listed; and

(iii) Information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs;

(7) Provision of performance information and program cost information on eligible providers of education, training, and workforce services by program and type of providers;

(8) Provision of information, in usable and understandable formats and languages, about how the local area is performing on local performance accountability measures, as well as any additional performance information relating to the area's one-stop delivery system;

(9) Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance, and appropriate referrals to those services and assistance, including: Child care; child support; medical or child health assistance available through the State's Medicaid program and Children's Health Insurance Program; benefits under SNAP; assistance through the earned income tax credit; and assistance under a State program for TANF, and other supportive services and transportation provided through that program;

(10) Provision of information and meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

(i) ''Meaningful assistance'' means:

(A) Providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants; or

(B) Providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

(ii) The costs associated in providing this assistance may be paid for by the State's unemployment insurance program, or the WIOA adult or dislocated worker programs, or some combination thereof.

(11) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA.

(b) Individualized career services must be made available if determined to be appropriate in order for an individual to obtain or retain employment. These services include the following services, as consistent with program requirements and Federal cost principles:

(1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(2) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her employment goals, including the list of, and information about, the eligible training providers (as described in 20 CFR 680.180);

(3) Group counseling;

(4) Individual counseling;

(5) Career planning;

(6) Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training;

(7) Internships and work experiences that are linked to careers (as described in 20 CFR 680.170);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and 20 CFR 681.500;

(10) Out-of-area job search assistance and relocation assistance; and

(11) English language acquisition and integrated education and training programs.

(c) Follow-up services must be provided, as appropriate, including: Counseling regarding the workplace, for participants in adult or dislocated worker workforce investment activities who are placed in unsubsidized employment, for up to 12 months after the first day of employment.

(d) In addition to the requirements in paragraph (a)(2) of this section, TANF agencies must identify employment services and related support being provided by the TANF program (within the local area) that qualify as career services and ensure access to them via the local one-stop delivery system.

§463.435 What are the business services provided through the one-stop delivery system, and how are they provided?

(a) Certain career services must be made available to local employers, specifically labor exchange activities and labor market information described in §463.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and

small employers and their intermediaries. Local areas also must develop, convene, or implement industry or sector partnerships.

(b) Customized business services may be provided to employers, employer associations, or other such organizations. These services are tailored for specific employers and may include:

(1) Customized screening and referral of qualified participants in training services to employers;

(2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;

(3) Customized recruitment events and related services for employers including targeted job fairs;

(4) Human resource consultation services, including but not limited to assistance with:

(i) Writing/reviewing job descriptions and employee handbooks;

(ii) Developing performance evaluation and personnel policies;

(iii) Creating orientation sessions for new workers;

(iv) Honing job interview techniques for efficiency and compliance;

(v) Analyzing employee turnover;

(vi) Creating job accommodations and using assistive technologies; or

(vii) Explaining labor and employment laws to help employers comply with discrimination, wage/hour, and safety/health regulations;

(5) Customized labor market information for specific employers, sectors, industries or clusters; and

(6) Other similar customized services.

(c) Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local WDB, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB and in cooperation with the State. Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:

(1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);

(2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;

(3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized post-secondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

(4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

(5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and

(6) Assisting employers with accessing local, State, and Federal tax credits.

(d) All business services and strategies must be reflected in the local plan, described in 20 CFR 679.560(b)(3).

§ 463.440 When may a fee be charged for the business services in this subpart?

(a) There is no requirement that a fee-for-service be charged to employers.

(b) No fee may be charged for services provided in § 463.435(a).

(c) A fee may be charged for services provided under § 463.435(b) and (c). Services provided under § 463.435(c) may be provided through effective business intermediaries working in conjunction with the Local WDB and may also be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other

public and private resources in a manner determined appropriate by the Local WDB. The Local WDB may examine the services provided compared with the assets and resources available within the local one-stop delivery system and through its partners to determine an appropriate cost structure for services, if any.

(d) Any fees earned are recognized as program income and must be expended by the partner in accordance with the partner program's authorizing statute, implementing regulations, and Federal cost principles identified in Uniform Guidance.

§463.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?

(a) The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the Local WDB and the one-stop partners, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU, if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

(b) The MOU must include:

(1) A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;

(2) Agreement on funding the costs of the services and the operating costs of the system, including:

(i) Funding of infrastructure costs of one-stop centers in accordance with §§463.700 through 463.755; and

(ii) Funding of the shared services and operating costs of the one-stop delivery system described in §463.760;

(3) Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;

(4) Methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;

(5) The duration of the MOU and procedures for amending it; and

(6) Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed, not less than once every 3-year period to ensure appropriate funding and delivery of services.

(c) The MOU may contain any other provisions agreed to by the parties that are consistent with WIOA title I, the authorizing statutes and regulations of one-stop partner programs, and the WIOA regulations.

(d) When fully executed, the MOU must contain the signatures of the Local WDB, one-stop partners, the chief elected official(s), and the time period in which the agreement is effective. The MOU must be updated not less than every 3 years to reflect any changes in the signatory official of the Board, one-stop partners, and chief elected officials, or one-stop infrastructure funding.

(e) If a one-stop partner appeal to the State regarding infrastructure costs, using the process described in §463.750, results in a change to the one-stop partner's infrastructure cost contributions, the MOU must be updated to reflect the final one-stop partner infrastructure cost contributions.

§463.505 Is there a single Memorandum of Understanding for the local area, or must there be different Memoranda of Understanding between the Local Workforce Development Board and each partner?

(a) A single ''umbrella'' MOU may be developed that addresses the issues relating to the local one-stop delivery system for the Local WDB, chief elected official and all partners. Alternatively, the Local WDB (with agreement of chief elected official) may enter into separate agreements between each partner or groups of partners.

(b) Under either approach, the requirements described in §463.500 apply. Since funds are generally appropriated annually, the Local WDB may negotiate financial agreements with each partner annually to update funding of

services and operating costs of the system under the MOU.

§ 463.510 How must the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local WDBs, chief elected officials, and one-stop partners. Local WDBs and partners must enter into good-faith negotiations. Local WDBs, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State WDB, or other appropriate parties on other aspects of the MOU.

(b) Local WDBs and one-stop partners must establish, in the MOU, how they will fund the infrastructure costs and other shared costs of the one-stop centers. If agreement regarding infrastructure costs is not reached when other sections of the MOU are ready, an interim infrastructure funding agreement may be included instead, as described in § 463.715(c). Once agreement on infrastructure funding is reached, the Local WDB and one-stop partners must amend the MOU to include the infrastructure funding of the one-stop centers. Infrastructure funding is described in detail in §§ 463.700 through 463.760.

(c) The Local WDB must report to the State WDB, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local WDB and partners must document the negotiations and efforts that have taken place in the MOU. The State WDB, one-stop partner programs, and the Governor may consult with the appropriate Federal agencies to address impasse situations related to issues other than infrastructure funding after attempting to address the impasse. Impasses related to infrastructure cost funding must be resolved using the State infrastructure cost funding mechanism described in § 463.730.

(2) The Local WDB must report failure to execute an MOU with a required partner to the Governor, State WDB, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local WDB in resolving the impasse, the Governor or the State WDB must report the failure to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

§ 463.600 Who may operate one-stop centers?

(a) One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 463.400.

(b) The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.

(c) The types of entities that may be a one-stop operator include:

(1) An institution of higher education;

(2) An Employment Service State agency established under the Wagner-Peyser Act;

(3) A community-based organization, nonprofit organization, or workforce intermediary;

(4) A private for-profit entity;

(5) A government agency;

(6) A Local WDB, with the approval of the chief elected official and the Governor; or

(7) Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.

(d) Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.

(e) The State and Local WDBs must ensure that, in carrying out WIOA programs and activities, one-stop operators:

(1) Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers (further discussed in 20 CFR 679.430);

(2) Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services; and

(3) Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at 20 CFR 683.295, the Uniform Guidance at 2 CFR part 200, and other applicable regulations and policies.

§463.605 How is the one-stop operator selected?

(a) Consistent with paragraphs (b) and (c) of this section, the Local WDB must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, at least once every 4 years. A State may require, or a Local WDB may choose to implement, a competitive selection process more than once every 4 years.

(b) In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.

(c) All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance set out at 2 CFR 200.318 through 200.326. All references to ''noncompetitive proposals'' in the Uniform Guidance at 2 CFR 200.320(f) will be read as ''sole source procurement'' for the purposes of implementing this section.

(d) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

§463.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?

(a) States may select a one-stop operator through sole source selection when allowed under the same policies and procedures used for competitive procurement with non-Federal funds, while other non-Federal entities including subrecipients of a State (such as local areas) may select a one-stop operator through sole selection when consistent with local procurement policies and procedures and the Uniform Guidance set out at 2 CFR 200.320.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with §463.605(c), written documentation must be prepared and maintained concerning the entire process of making such a selection.

(c) Such sole source procurement must include appropriate conflict of interest policies and procedures. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(d) A Local WDB may be selected as a one-stop operator through sole source procurement only with agreement of the chief elected official in the local area and the Governor. The Local WDB must establish sufficient conflict of interest policies and procedures and these policies and procedures must be approved by the Governor.

§463.615 May an entity currently serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?

(a) Local WDBs may compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies may compete for and be selected as one-stop operators by the Local WDB, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single-area States where the State WDB serves as the Local WDB, the State agency is eligible to compete for and be selected as operator as long as appropriate firewalls and conflict of interest policies

are in place and followed for the competition. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflicts of interest.

§ 463.620 What is the one-stop operator's role?

(a) At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local WDBs may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers across the one-stop delivery system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area, which may include affiliated sites. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b)(1) Subject to paragraph (b)(2) of this section, a one-stop operator may not perform the following functions: Convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; or develop and submit budget for activities of the Local WDB in the local area.

(2) An entity serving as a one-stop operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

§ 463.625 Can a one-stop operator also be a service provider?

Yes, but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage, or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local WDB level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflicts of interest.

§ 463.630 Can State merit staff still work in a one-stop center where the operator is not a governmental entity?

Yes. State merit staff can continue to perform functions and activities in the one-stop center. The Local WDB and one-stop operator must establish a system for management of merit staff in accordance with State policies and procedures. Continued use of State merit staff for the provision of Wagner-Peyser Act services or services from other programs with merit staffing requirements must be included in the competition for and final contract with the one-stop operator when Wagner-Peyser Act services or services from other programs with merit staffing requirements are being provided.

§ 463.635 What is the compliance date of the provisions of this subpart?

(a) No later than July 1, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop center.

(b) By November 17, 2016, every Local WDB must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis.

§ 463.700 What are the one-stop infrastructure costs?

(a) Infrastructure costs of one-stop centers are nonpersonnel costs that are

necessary for the general operation of the one-stop center, including:

(1) Rental of the facilities;

(2) Utilities and maintenance;

(3) Equipment (including assessment-related products and assistive technology for individuals with disabilities); and

(4) Technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities.

(b) Local WDBs may consider common identifier costs as costs of one-stop infrastructure.

(c) Each entity that carries out a program or activities in a local one-stop center, described in §§463.400 through 463.410, must use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers. These payments must be in accordance with this subpart; Federal cost principles, which require that all costs must be allowable, reasonable, necessary, and allocable to the program; and all other applicable legal requirements.

§463.705 What guidance must the Governor issue regarding one-stop infrastructure funding?

(a) The Governor, after consultation with chief elected officials, the State WDB, and Local WDBs, and consistent with guidance and policies provided by the State WDB, must develop and issue guidance for use by local areas, specifically:

(1) Guidelines for State-administered one-stop partner programs for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system, and relative benefit received, consistent with Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, including determining funding for the costs of infrastructure; and

(2) Guidance to assist Local WDBs, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure at one-stop centers based on proportionate use and relative benefit received, and consistent with Federal cost principles contained in the Uniform Guidance at 2 CFR part 200.

(b) The guidance must include:

(1) The appropriate roles of the one-stop partner programs in identifying one-stop infrastructure costs;

(2) Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each partner based on its proportionate use of the one-stop centers and relative benefit received, consistent with Federal cost principles at 2 CFR part 200; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State funding mechanism described in §463.730, and timelines for a one-stop partner to submit an appeal in the State funding mechanism.

§463.710 How are infrastructure costs funded?

Infrastructure costs are funded either through the local funding mechanism described in §463.715 or through the State funding mechanism described in §463.730.

§463.715 How are one-stop infrastructure costs funded in the local funding mechanism?

(a) In the local funding mechanism, the Local WDB, chief elected officials, and one-stop partners agree to amounts and methods of calculating amounts each partner will contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU. The local funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated non-cash and third-party in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations;

(2) Contributions must be negotiated between one-stop partners, chief elected officials, and the Local WDB and the amount to be contributed must be included in the MOU;

(3) The one-stop partner program's proportionate share of funding must be calculated in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 based upon a reasonable cost allocation methodology whereby infrastructure costs are charged to each partner in proportion to its use of the one-stop center, relative to benefits received. Such costs must also be allowable, reasonable, necessary, and allocable;

(4) Partner shares must be periodically reviewed and reconciled against actual costs incurred, and adjusted to ensure that actual costs charged to any one-stop partners are proportionate to the use of the one-stop center and relative to the benefit received by the one-stop partners and their respective programs or activities.

(b) In developing the section of the MOU on one-stop infrastructure funding described in § 463.755, the Local WDB and chief elected officials will:

(1) Ensure that the one-stop partners adhere to the guidance identified in § 463.705 on one-stop delivery system infrastructure costs.

(2) Work with one-stop partners to achieve consensus and informally mediate any possible conflicts or disagreements among one-stop partners.

(3) Provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the one-stop infrastructure costs arrangement.

(c) The MOU may include an interim infrastructure funding agreement, including as much detail as the Local WDB has negotiated with one-stop partners, if all other parts of the MOU have been negotiated, in order to allow the partner programs to operate in the one-stop centers. The interim infrastructure funding agreement must be finalized within 6 months of when the MOU is signed. If the interim infrastructure funding agreement is not finalized within that timeframe, the Local WDB must notify the Governor, as described in § 463.725.

§ 463.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?

(a) In the local funding mechanism, one-stop partner programs may determine what funds they will use to pay for infrastructure costs. The use of these funds must be in accordance with the requirements in this subpart, and with the relevant partner's authorizing statutes and regulations, including, for example, prohibitions against supplanting non-Federal resources, statutory limitations on administrative costs, and all other applicable legal requirements. In the case of partners administering programs authorized by title I of WIOA, these infrastructure costs may be considered program costs. In the case of partners administering adult education and literacy programs authorized by title II of WIOA, these funds must include Federal funds made available for the local administration of adult education and literacy programs authorized by title II of WIOA. These funds may also include non-Federal resources that are cash, in-kind or third-party contributions. In the case of partners administering the Carl D. Perkins Career and Technical Education Act of 2006, funds used to pay for infrastructure costs may include funds available for local administrative expenses, non-Federal resources that are cash, in-kind or third-party contributions, and may include other funds made available by the State.

(b) There are no specific caps on the amount or percent of overall funding a one-stop partner may contribute to fund infrastructure costs under the local funding mechanism, except that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. However, amounts contributed for infrastructure costs must be allowable and based on proportionate use of the one-stop centers and relative benefit received by the partner program, taking into account the total cost of the one-stop infrastructure as well as

alternate financing options, and must be consistent with 2 CFR part 200, including the Federal cost principles.

(c) Cash, non-cash, and third-party in-kind contributions may be provided by one-stop partners to cover their proportionate share of infrastructure costs.

(1) Cash contributions are cash funds provided to the Local WDB or its designee by one-stop partners, either directly or by an interagency transfer.

(2) Non-cash contributions are comprised of—

(i) Expenditures incurred by one-stop partners on behalf of the one-stop center; and

(ii) Non-cash contributions or goods or services contributed by a partner program and used by the one-stop center.

(3) Non-cash contributions, especially those set forth in paragraph (c)(2)(ii) of this section, must be valued consistent with 2 CFR 200.306 to ensure they are fairly evaluated and meet the partners' proportionate share.

(4) Third-party in-kind contributions are:

(i) Contributions of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, by a non-one-stop partner to support the one-stop center in general, not a specific partner; or

(ii) Contributions by a non-one-stop partner of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, to a one-stop partner to support its proportionate share of one-stop infrastructure costs.

(iii) In-kind contributions described in paragraphs (c)(4)(i) and (ii) of this section must be valued consistent with 2 CFR 200.306 and reconciled on a regular basis to ensure they are fairly evaluated and meet the proportionate share of the partner.

(5) All partner contributions, regardless of the type, must be reconciled on a regular basis (*i.e.,* monthly or quarterly), comparing actual expenses incurred to relative benefits received, to ensure each partner program is contributing its proportionate share in accordance with the terms of the MOU.

§463.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Workforce Development Board, chief elected officials, and one-stop partners?

With regard to negotiations for infrastructure funding for Program Year (PY) 2017 and for each subsequent program year thereafter, if the Local WDB, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local funding mechanism in accordance with the Governor's guidance issued under §463.705 and consistent with the regulations in §§463.715 and 463.720, and include that consensus agreement in the signed MOU, then the Local WDB must notify the Governor by the deadline established by the Governor under §463.705(b)(3). Once notified, the Governor must administer funding through the State funding mechanism, as described in §§463.730 through 463.738, for the program year impacted by the local area's failure to reach consensus.

§463.730 What is the State one-stop infrastructure funding mechanism?

(a) Consistent with sec. 121(h)(1)(A)(i)(II) of WIOA, if the Local WDB, chief elected official, and one-stop partners in a local area do not reach consensus agreement on methods of sufficiently funding the costs of infrastructure of one-stop centers for a program year, the State funding mechanism is applicable to the local area for that program year.

(b) In the State funding mechanism, the Governor, subject to the limitations in paragraph (c) of this section, determines one-stop partner contributions after consultation with the chief elected officials, Local WDBs, and the State WDB. This determination involves:

(1) The application of a budget for one-stop infrastructure costs as described in §463.735, based on either agreement reached in the local area negotiations or the State WDB formula outlined in §463.745;

(2) The determination of each local one-stop partner program's proportionate use of the one-stop delivery system and relative benefit received,

consistent with the Uniform Guidance at 2 CFR part 200, including the Federal cost principles, the partner programs' authorizing laws and regulations, and other applicable legal requirements described in § 463.736; and

(3) The calculation of required statewide program caps on contributions to infrastructure costs from one-stop partner programs in areas operating under the State funding mechanism as described in § 463.738.

(c) In certain situations, the Governor does not determine the infrastructure cost contributions for some one-stop partner programs under the State funding mechanism.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American program grantees described in 20 CFR part 684. The appropriate portion of funds to be provided by Native American program grantees to pay for one-stop infrastructure must be determined as part of the development of the MOU described in § 463.500 and specified in that MOU.

(2) In States in which the policymaking authority is placed in an entity or official that is independent of the authority of the Governor with respect to the funds provided for adult education and literacy activities authorized under title II of WIOA, postsecondary career and technical education activities authorized under the Carl D. Perkins Career and Technical Education Act of 2006, or VR services authorized under title I of the Rehabilitation Act of 1973 (other than sec. 112 or part C), as amended by WIOA title IV, the determination of the amount each of the applicable partners must contribute to assist in paying the infrastructure costs of one-stop centers must be made by the official or chief officer of the entity with such authority, in consultation with the Governor.

(d) Any duty, ability, choice, responsibility, or other action otherwise related to the determination of infrastructure costs contributions that is assigned to the Governor in §§ 463.730 through 463.745 also applies to this decision-making process performed by the official or chief officer described in paragraph (c)(2) of this section.

§ 463.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?

(a) To initiate the State funding mechanism, a Local WDB that has not reached consensus on methods of sufficiently funding local infrastructure through the local funding mechanism as provided in § 463.725 must notify the Governor by the deadline established by the Governor under § 463.705(b)(3).

(b) Once a Local WDB has informed the Governor that no consensus has been reached:

(1) The Local WDB must provide the Governor with local negotiation materials in accordance with § 463.735(a).

(2) The Governor must determine the one-stop center budget by either:

(i) Accepting a budget previously agreed upon by partner programs in the local negotiations, in accordance with § 463.735(b)(1); or

(ii) Creating a budget for the one-stop center using the State WDB formula (described in § 463.745) in accordance with § 463.735(b)(3).

(3) The Governor then must establish a cost allocation methodology to determine the one-stop partner programs' proportionate shares of infrastructure costs, in accordance with § 463.736.

(4)(i) Using the methodology established under paragraph (b)(2)(ii) of this section, and taking into consideration the factors concerning individual partner programs listed in § 463.737(b)(2), the Governor must determine each partner's proportionate share of the infrastructure costs, in accordance with § 463.737(b)(1), and

(ii) In accordance with § 463.730(c), in some instances, the Governor does not determine a partner program's proportionate share of infrastructure funding costs, in which case it must be determined by the entities named in § 463.730(c)(1) and (2).

(5) The Governor must then calculate the statewide caps on the amounts that partner programs may be required to contribute toward infrastructure funding, according to the steps found at § 463.738(a)(1) through (4).

(6) The Governor must ensure that the aggregate total of the infrastructure contributions according to proportionate share required of all local partner programs in local areas under the State funding mechanism do not exceed the cap for that particular program, in accordance with §463.738(b)(1). If the total does not exceed the cap, the Governor must direct each one-stop partner program to pay the amount determined under §463.737(a) toward the infrastructure funding costs of the one-stop center. If the total does exceed the cap, then to determine the amount to direct each one-stop program to pay, the Governor may:

(i) Ascertain, in accordance with §463.738(b)(2)(i), whether the local partner or partners whose proportionate shares are calculated above the individual program caps are willing to voluntarily contribute above the capped amount to equal that program's proportionate share; or

(ii) Choose from the options provided in §463.738(b)(2)(ii), including having the local area re-enter negotiations to reassess each one-stop partner's proportionate share and make adjustments or identify alternate sources of funding to make up the difference between the capped amount and the proportionate share of infrastructure funding of the one-stop partner.

(7) If none of the solutions given in paragraphs (b)(6)(i) and (ii) of this section prove to be viable, the Governor must reassess the proportionate shares of each one-stop partner so that the aggregate amount attributable to the local partners for each program is less than that program's cap amount. Upon such reassessment, the Governor must direct each one-stop partner program to pay the reassessed amount toward the infrastructure funding costs of the one-stop center.

§463.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?

(a) Local WDBs must provide to the Governor appropriate and relevant materials and documents used in the negotiations under the local funding mechanism, including but not limited to: The local WIOA plan, the cost allocation method or methods proposed by the partners to be used in determining proportionate share, the proposed amounts or budget to fund infrastructure, the amount of total partner funds included, the type of funds or non-cash contributions, proposed one-stop center budgets, and any agreed upon or proposed MOUs.

(b)(1) If a local area has reached agreement as to the infrastructure budget for the one-stop centers in the local area, it must provide this budget to the Governor as required by paragraph (a) of this section. If, as a result of the agreed upon infrastructure budget, only the individual programmatic contributions to infrastructure funding based upon proportionate use of the one-stop centers and relative benefit received are at issue, the Governor may accept the budget, from which the Governor must calculate each partner's contribution consistent with the cost allocation methodologies contained in the Uniform Guidance found in 2 CFR part 200, as described in §463.736.

(2) The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other element or product of the negotiating process provided to the Governor as required by paragraph (a) of this section.

(3) If a local area has not reached agreement as to the infrastructure budget for the one-stop centers in the local area, or if the Governor determines that the agreed upon budget does not adequately meet the needs of the local area or does not reasonably work within the confines of the local area's resources in accordance with the Governor's one-stop budget guidance (which is required to be issued by WIOA sec. 121(h)(1)(B) and under §463.705), then, in accordance with §463.745, the Governor must use the formula developed by the State WDB based on at least the factors required under §463.745, and any associated weights to determine the local area budget.

§ 463.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?

Once the appropriate budget is determined for a local area through either method described in § 463.735 (by acceptance of a budget agreed upon in local negotiation or by the Governor applying the formula detailed in § 463.745), the Governor must determine the appropriate cost allocation methodology to be applied to the one-stop partners in such local area, consistent with the Federal cost principles permitted under 2 CFR part 200, to fund the infrastructure budget.

§ 463.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?

(a) The Governor must direct the one-stop partners in each local area that have not reached agreement under the local funding mechanism to pay what the Governor determines is each partner program's proportionate share of infrastructure funds for that area, subject to the application of the caps described in § 463.738.

(b)(1) The Governor must use the cost allocation methodology—as determined under § 463.736—to determine each partner's proportionate share of the infrastructure costs under the State funding mechanism, subject to considering the factors described in paragraph (b)(2) of this section.

(2) In determining each partner program's proportionate share of infrastructure costs, the Governor must take into account the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner (such as costs associated with maintaining the Local WDB or information technology systems), as well as the statutory requirements for each partner program, the partner program's ability to fulfill such requirements, and all other applicable legal requirements. The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other materials or documents of the negotiating process, which must be provided to the Governor by the Local WDB and described in § 463.735(a).

§ 463.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?

(a) The Governor must calculate the statewide cap on the contributions for one-stop infrastructure funding required to be provided by each one-stop partner program for those local areas that have not reached agreement. The cap is the amount determined under paragraph (a)(4) of this section, which the Governor derives by:

(1) First, determining the amount resulting from applying the percentage for the corresponding one-stop partner program provided in paragraph (d) of this section to the amount of Federal funds provided to carry out the one-stop partner program in the State for the applicable fiscal year;

(2) Second, selecting a factor (or factors) that reasonably indicates the use of one-stop centers in the State, applying such factor(s) to all local areas in the State, and determining the percentage of such factor(s) applicable to the local areas that reached agreement under the local funding mechanism in the State;

(3) Third, determining the amount resulting from applying the percentage determined in paragraph (a)(2) of this section to the amount determined under paragraph (a)(1) of this section for the one-stop partner program; and

(4) Fourth, determining the amount that results from subtracting the amount determined under paragraph (a)(3) of this section from the amount determined under paragraph (a)(1) of this section. The outcome of this final calculation results in the partner program's cap.

(b)(1) The Governor must ensure that the funds required to be contributed by each partner program in the local areas in the State under the State funding

mechanism, in aggregate, do not exceed the statewide cap for each program as determined under paragraph (a) of this section.

(2) If the contributions initially determined under §463.737 would exceed the applicable cap determined under paragraph (a) of this section, the Governor may:

(i) Ascertain if the one-stop partner whose contribution would otherwise exceed the cap determined under paragraph (a) of this section will voluntarily contribute above the capped amount, so that the total contributions equal that partner's proportionate share. The one-stop partner's contribution must still be consistent with the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements; or

(ii) Direct or allow the Local WDB, chief elected officials, and one-stop partners to: Re-enter negotiations, as necessary; reduce the infrastructure costs to reflect the amount of funds that are available for such costs without exceeding the cap levels; reassess the proportionate share of each one-stop partner; or identify alternative sources of financing for one-stop infrastructure funding, consistent with the requirement that each one-stop partner pay an amount that is consistent with the proportionate use of the one-stop center and relative benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements.

(3) If applicable under paragraph (b)(2)(ii) of this section, the Local WDB, chief elected officials, and one-stop partners, after renegotiation, may come to agreement, sign an MOU, and proceed under the local funding mechanism. Such actions do not require the redetermination of the applicable caps under paragraph (a) of this section.

(4) If, after renegotiation, agreement among partners still cannot be reached or alternate financing cannot be identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in paragraph (d) of this section. In determining these adjustments, the Governor may take into account information relating to the renegotiation as well as the information described in §463.735(a).

(c) *Limitations*. Subject to paragraph (a) of this section and in accordance with WIOA sec. 121(h)(2)(D), the following limitations apply to the Governor's calculations of the amount that one-stop partners in local areas that have not reached agreement under the local funding mechanism may be required under §463.736 to contribute to one-stop infrastructure funding:

(1) *WIOA formula programs and Wagner-Peyser Act Employment Service*. The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) must not exceed three percent of the amount of the program in the State for a program year.

(2) *Other one-stop partners*. For required one-stop partners other than those specified in paragraphs (c)(1), (3), (5), and (6) of this section, the portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that program in the State for a fiscal year. For purposes of the Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available by the State for postsecondary level programs and activities under sec. 132 of the Carl D. Perkins Career and Technical Education Act and the amount of funds used by the State under sec. 112(a)(3) of the Perkins Act during the prior year to administer postsecondary level programs and activities, as applicable.

(3) Vocational Rehabilitation

(i) Within a State, for the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) and §463.400, the allotment is based on the one State Federal fiscal year allotment, even in instances where that allotment is shared between two State agencies, and the cumulative portion of funds required to be contributed must not exceed—

(A) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016 for purposes of applicability of the State funding mechanism for PY 2017;

(B) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017 for purposes of applicability of the State funding mechanism for PY 2018;

(C) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018 for purposes of applicability of the State funding mechanism for PY 2019;

(D) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years for purposes of applicability of the State funding mechanism for PY 2020 and subsequent years.

(ii) The limitations set forth in paragraph (d)(3)(i) of this section for any given fiscal year must be based on the final VR allotment to the State in the applicable Federal fiscal year.

(4) *Federal direct spending programs.* For local areas that have not reached a one-stop infrastructure funding agreement by consensus, an entity administering a program funded with direct Federal spending, as defined in sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)), must not be required to provide more for infrastructure costs than the amount that the Governor determined (as described in § 463.737).

(5) *TANF programs.* For purposes of TANF, the cap on contributions is determined based on the total Federal TANF funds expended by the State for work, education, and training activities during the prior Federal fiscal year (as reported to the Department of Health and Human Services (HHS) on the quarterly TANF Financial Report form), plus any additional amount of Federal TANF funds that the State TANF agency reasonably determines was expended for administrative costs in connection with these activities but that was separately reported to HHS as an administrative cost. The State's contribution to the one-stop infrastructure must not exceed 1.5 percent of these combined expenditures.

(6) *Community Services Block Grant (CSBG) programs.* For purposes of CSBG, the cap on contributions will be based on the total amount of CSBG funds determined by the State to have been expended by local CSBG-eligible entities for the provision of employment and training activities during the prior Federal fiscal year for which information is available (as reported to HHS on the CSBG Annual Report) and any additional amount that the State CSBG agency reasonably determines was expended for administrative purposes in connection with these activities and was separately reported to HHS as an administrative cost. The State's contribution must not exceed 1.5 percent of these combined expenditures.

(d) For programs for which it is not otherwise feasible to determine the amount of Federal funding used by the program until the end of that program's operational year—because, for example, the funding available for education, employment, and training activities is included within funding for the program that may also be used for other unrelated activities—the determination of the Federal funds provided to carry out the program for a fiscal year under paragraph (a)(1) of this section may be determined by:

(1) The percentage of Federal funds available to the one-stop partner program that were used by the one-stop partner program for education, employment, and training activities in the previous fiscal year for which data are available; and

(2) Applying the percentage determined under paragraph (d)(1) of this section to the total amount of Federal funds available to the one-stop partner program for the fiscal year for which the determination under paragraph (a)(1) of this section applies.

§ 463.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

(a) In the State funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in 20 CFR part 684, may be paid using program funds, administrative funds, or both. Infrastructure costs for the Senior Community Service Employment Program under title V of the Older Americans Act (42 U.S.C. 3056 *et seq.*) may also be paid

using program funds, administrative funds, or both.

(b) In the State funding mechanism, infrastructure costs for other required one-stop partner programs (listed in §§463.400 through 463.410) are limited to the program's administrative funds, as appropriate.

(c) In the State funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from the funds that are available for local administration and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

(d) In the State funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from funds available for local administration of postsecondary level programs and activities to eligible recipients or consortia of eligible recipients and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

§463.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?

The State WDB must develop a formula, as described in WIOA sec. 121(h)(3)(B), to be used by the Governor under §463.735(b)(3) in determining the appropriate budget for the infrastructure costs of one-stop centers in the local areas that do not reach agreement under the local funding mechanism and are, therefore, subject to the State funding mechanism. The formula identifies the factors and corresponding weights for each factor that the Governor must use, which must include: the number of one-stop centers in a local area; the population served by such centers; the services provided by such centers; and any factors relating to the operations of such centers in the local area that the State WDB determines are appropriate. As indicated in §463.735(b)(1), if the local area has agreed on such a budget, the Governor may accept that budget in lieu of applying the formula factors.

§463.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?

(a) The Governor must establish a process, described under sec. 121(h)(2)(E) of WIOA, for a one-stop partner administering a program described in §§463.400 through 463.410 to appeal the Governor's determination regarding the one-stop partner's portion of funds to be provided for one-stop infrastructure costs. This appeal process must be described in the Unified State Plan.

(b) The appeal may be made on the ground that the Governor's determination is inconsistent with proportionate share requirements in §463.735(a), the cost contribution limitations in §463.735(b), the cost contribution caps in §463.738, consistent with the process described in the State Plan.

(c) The process must ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of 20 CFR 683.630.

(d) The one-stop partner must submit an appeal in accordance with State's deadlines for appeals specified in the guidance issued under §463.705(b)(3), or if the State has not set a deadline, within 21 days from the Governor's determination.

§463.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?

The MOU, fully described in §463.500, must contain the following information whether the local areas use either the local one-stop or the State funding method:

(a) The period of time in which this infrastructure funding agreement is effective. This may be a different time period than the duration of the MOU.

(b) Identification of an infrastructure and shared services budget that will be

periodically reconciled against actual costs incurred and adjusted accordingly to ensure that it reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to each partner in proportion to its use of the one-stop center and relative benefit received, and that complies with 2 CFR part 200 (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local WDB participating in the infrastructure funding arrangement.

(d) Steps the Local WDB, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State funding process.

(e) Description of the process to be used among partners to resolve issues during the MOU duration period when consensus cannot be reached.

(f) Description of the periodic modification and review process to ensure equitable benefit among one-stop partners.

§ 463.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

(a) In addition to jointly funding infrastructure costs, one-stop partners listed in §§ 463.400 through 463.410 must use a portion of funds made available under their programs' authorizing Federal law (or fairly evaluated in-kind contributions) to pay the additional costs relating to the operation of the one-stop delivery system. These other costs must include applicable career services and may include other costs, including shared services.

(b) For the purposes of paragraph (a) of this section, shared services' costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills, identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared operating costs may also include shared costs of the Local WDB's functions.

(c) Contributions to the additional costs related to operation of the one-stop delivery system may be cash, non-cash, or third-party in-kind contributions, consistent with how these are described in § 463.720(c).

(d) The shared costs described in paragraph (a) of this section must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles in 2 CFR part 200 (or any corresponding similar regulation or ruling) requiring that costs are allowable, reasonable, necessary, and allocable.

(e) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

§ 463.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?

(a) The State WDB, in consultation with chief elected officials and Local WDBs, must establish objective criteria and procedures for Local WDBs to use when certifying one-stop centers.

(1) The State WDB, in consultation with chief elected officials and Local WDBs, must review and update the criteria every 2 years as part of the review and modification of State Plans pursuant to § 463.135.

(2) The criteria must be consistent with the Governor's and State WDB's guidelines, guidance, and policies on infrastructure funding decisions, described in § 463.705. The criteria must evaluate the one-stop centers and one-stop delivery system for effectiveness, including customer satisfaction, physical and programmatic accessibility, and continuous improvement.

(3) When the Local WDB is the one-stop operator as described in 20 CFR 679.410, the State WDB must certify the one-stop center.

(b) Evaluations of effectiveness must include how well the one-stop center integrates available services for participants and businesses, meets the workforce development needs of participants and the employment needs of

local employers, operates in a cost-efficient manner, coordinates services among the one-stop partner programs, and provides access to partner program services to the maximum extent practicable, including providing services outside of regular business hours where there is a workforce need, as identified by the Local WDB. These evaluations must take into account feedback from one-stop customers. They must also include evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services. These evaluations must include criteria evaluating how well the centers and delivery systems take actions to comply with the disability-related regulations implementing WIOA sec. 188, set forth at 29 CFR part 38. Such actions include, but are not limited to:

(1) Providing reasonable accommodations for individuals with disabilities;

(2) Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against persons with disabilities;

(3) Administering programs in the most integrated setting appropriate;

(4) Communicating with persons with disabilities as effectively as with others;

(5) Providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity; and

(6) Providing for the physical accessibility of the one-stop center to individuals with disabilities.

(c) Evaluations of continuous improvement must include how well the one-stop center supports the achievement of the negotiated local levels of performance for the indicators of performance for the local area described in sec. 116(b)(2) of WIOA and part 463. Other continuous improvement factors may include a regular process for identifying and responding to technical assistance needs, a regular system of continuing professional staff development, and having systems in place to capture and respond to specific customer feedback.

(d) Local WDBs must assess at least once every 3 years the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems using the criteria and procedures developed by the State WDB. The Local WDB may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local WDBs must review and update the criteria every 2 years as part of the Local Plan update process described in §463.580. Local WDBs must certify one-stop centers in order to be eligible to use infrastructure funds in the State funding mechanism described in §463.730.

(e) All one-stop centers must comply with applicable physical and programmatic accessibility requirements, as set forth in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§463.900 What is the common identifier to be used by each one-stop delivery system?

(a) The common one-stop delivery system identifier is ''American Job Center.''

(b) As of November 17, 2016, each one-stop delivery system must include the ''American Job Center'' identifier or ''a proud partner of the American Job Center network'' on all primary electronic resources used by the one-stop delivery system, and on any newly printed, purchased, or created materials.

(c) As of July 1, 2017, each one-stop delivery system must include the ''American Job Center'' identifier or ''a proud partner of the American Job Center network'' on all products, programs, activities, services, electronic resources, facilities, and related property and new materials used in the one-stop delivery system.

(d) One-stop partners, States, or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

Subpart K [Reserved]

PART 464 [RESERVED]

PART 472 [RESERVED]

PART 477 [RESERVED]

PARTS 489–499 [RESERVED]

CHAPTER V—OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS, DEPARTMENT OF EDUCATION

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PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

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AUTHORITY: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

SOURCE: 53 FR 11210, Apr. 5, 1988, unless otherwise noted.

Subpart A—General

SOURCE: 59 FR 22336, Apr. 29, 1994, unless otherwise noted.

§ 600.1 Scope.

This part establishes the rules and procedures that the Secretary uses to determine whether an educational institution qualifies in whole or in part as an eligible institution of higher education under the Higher Education Act of 1965, as amended (HEA). An eligible institution of higher education may apply to participate in programs authorized by the HEA (HEA programs).

(Authority: 20 U.S.C. 1088, 1094, 1099b, 1099c, and 1141)

§ 600.2 Definitions.

The following definitions apply to terms used in this part:

Accredited: The status of public recognition that a nationally recognized accrediting agency grants to an institution or educational program that meets the agency's established requirements.

Award year: The period of time from July 1 of one year through June 30 of the following year.

Branch Campus: A location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

(1) Is permanent in nature;

(2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;

(3) Has its own faculty and administrative or supervisory organization; and

(4) Has its own budgetary and hiring authority.

Clock hour: A period of time consisting of—

(1) A 50- to 60-minute class, lecture, or recitation in a 60-minute period;

(2) A 50- to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or

(3) Sixty minutes of preparation in a correspondence course.

Correspondence course: (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced.

(2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

(3) A correspondence course is not distance education.

Credit hour: Except as provided in 34 CFR 668.8(k) and (l), a credit hour is an amount of work represented in intended learning outcomes and verified by evidence of student achievement that is an institutionally established equivalency that reasonably approximates not less than—

(1) One hour of classroom or direct faculty instruction and a minimum of two hours of out of class student work each week for approximately fifteen weeks for one semester or trimester hour of credit, or ten to twelve weeks for one quarter hour of credit, or the equivalent amount of work over a different amount of time; or

(2) At least an equivalent amount of work as required in paragraph (1) of this definition for other academic activities as established by the institution including laboratory work, internships, practica, studio work, and other academic work leading to the award of credit hours.

Direct assessment program: A program as described in 34 CFR 668.10.

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include—

(1) The internet;

(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(3) Audio conferencing; or

(4) Video cassettes, DVDs, and CD–ROMs, if the cassettes, DVDs, or CD–ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.

Educational program: (1) A legally authorized postsecondary program of organized instruction or study that:

(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

(ii) May, in lieu of credit hours or clock hours as a measure of student learning, utilize direct assessment of student learning, or recognize the direct assessment of student learning by others, if such assessment is consistent with the accreditation of the institution or program utilizing the results of the assessment and with the provisions of § 668.10.

(2) The Secretary does not consider that an institution provides an educational program if the institution does not provide instruction itself (including a course of independent study) but merely gives credit for one or more of the following: Instruction provided by other institutions or schools; examinations or direct assessments provided by agencies or organizations; or other accomplishments such as ''life experience.''

Eligible institution: An institution that—

(1) Qualifies as—

(i) An institution of higher education, as defined in § 600.4;

(ii) A proprietary institution of higher education, as defined in § 600.5; or

(iii) A postsecondary vocational institution, as defined in § 600.6; and

(2) Meets all the other applicable provisions of this part.

Federal Family Education Loan (FFEL) Programs: The loan programs (formerly called the Guaranteed Student Loan (GSL) programs) authorized by title IV-B of the HEA, including the Federal Stafford Loan, Federal PLUS, Federal Supplemental Loans for Students (Federal SLS), and Federal Consolidation Loan programs, in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the students' attendance at eligible institutions. The Federal Stafford Loan, Federal PLUS, Federal SLS, and Federal Consolidation Loan programs are defined in 34 CFR part 668.

Incarcerated student: A student who is serving a criminal sentence in a Federal, State, or local penitentiary, prison, jail, reformatory, work farm, or other similar correctional institution. A student is not considered incarcerated if that student is in a half-way house or home detention or is sentenced to serve only weekends.

Legally authorized: The legal status granted to an institution through a charter, license, or other written document issued by the appropriate agency or official of the State in which the institution is physically located.

Nationally recognized accrediting agency: An agency or association that the Secretary recognizes as a reliable authority to determine the quality of education or training offered by an institution or a program offered by an institution. The Secretary recognizes these agencies and associations under the provisions of 34 CFR part 602 and publishes a list of the recognized agencies in the FEDERAL REGISTER.

Nonprofit institution: An institution that—

(1)(i) Is owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;

(ii) Is legally authorized to operate as a nonprofit organization by each State in which it is physically located; and

(iii) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)); or

(2) For a foreign institution—

(i) An institution that is owned and operated only by one or more nonprofit corporations or associations; and

(ii)(A) If a recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for title IV purposes, is determined by that tax authority to be a nonprofit educational institution; or

(B) If no recognized tax authority of the institution's home country is recognized by the Secretary for purposes of making determinations of an institution's nonprofit status for title IV purposes, the foreign institution demonstrates to the satisfaction of the Secretary that it is a nonprofit educational institution.

(3) Is determined by the U.S. Internal Revenue Service to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

One-academic-year training program: An educational program that is at least one academic year as defined under 34 CFR 668.2.

Preaccredited: A status that a nationally recognized accrediting agency, recognized by the Secretary to grant that status, has accorded an unaccredited public or private nonprofit institution that is progressing toward accreditation within a reasonable period of time.

Recognized equivalent of a high school diploma: The following are the equivalent of a high school diploma—

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the State recognizes as the equivalent of a high school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

(4) For a person who is seeking enrollment in an educational program

that leads to at least an associate degree or its equivalent and who has not completed high school but who excelled academically in high school, documentation that the student excelled academically in high school and has met the formalized, written policies of the institution for admitting such students.

Recognized occupation: An occupation that is—

(1) Identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget (OMB) or an Occupational Information Network O*Net-SOC code established by the Department of Labor, which is available at *www.onetonline.org* or its successor site; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Secretary: The Secretary of the Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

State: A State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

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.

Title IV, HEA program: Any of the student financial assistance programs listed in 34 CFR 668.1(c).

(Authority: 20 U.S.C. 1001, 1002, 1071, *et seq.*, 1078–2, 1088, 1091, 1094, 1099b, 1099c, 1141; 26 U.S.C. 501(c))

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40622, July 29, 1998; 64 FR 58615, Oct. 29, 1999; 71 FR 45692, Aug. 9, 2006; 74 FR 55425, Oct. 27, 2009; 74 FR 55932, Oct. 29, 2009; 75 FR 66946, Oct. 29, 2010, 75 FR 67192, Nov. 1, 2010; 79 FR 65006, Oct. 31, 2014]

EFFECTIVE DATE NOTE: At 81 FR 92262, Dec. 19, 2016, § 600.2 was amended by adding, in alphabetical order, a definition of ''State authorization reciprocity agreement'', effective July 1, 2020. For the convenience of the user, the added text is set forth as follows:

§ 600.2 Definitions.

* * * * *

State authorization reciprocity agreement: An agreement between two or more States that authorizes an institution located and legally authorized in a State covered by the agreement to provide postsecondary education through distance education or correspondence courses to students residing in other States covered by the agreement and does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.

§ 600.3 [Reserved]

§ 600.4 Institution of higher education.

(a) An institution of higher education is a public or private nonprofit educational institution that—

(1) Is in a State, or for purposes of the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, and Federal TRIO programs may also be located in the Federated States of Micronesia or the Marshall Islands;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(3) Is legally authorized to provide an educational program beyond secondary

education in the State in which the institution is physically located in accordance with § 600.9;

(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, or other nondegree recognized 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

(5) Is—

(i) Accredited or preaccredited; or

(ii) Approved by a State agency listed in the FEDERAL REGISTER in accordance with 34 CFR part 603, if the institution is a public postsecondary vocational educational institution that seeks to participate only in Federal student assistance programs.

(b) An institution is physically located in a State if it has a campus or other instructional site in that State.

(c) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

(Authority: 20 U.S.C. 1091, 1094, 1099b, 1141(a))

[59 FR 22336, Apr. 29, 1994, as amended at 64 FR 58615, Oct. 29, 1999; 74 FR 55932, Oct. 29, 2009; 75 FR 66946, Oct. 29, 2010]

§ 600.5 Proprietary institution of higher education.

(a) A proprietary institution of higher education is an educational institution that—

(1) Is not a public or private nonprofit educational institution;

(2) Is in a State;

(3) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(4) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located in accordance with § 600.9;

(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*) Has provided a program leading to a baccalaureate degree in liberal arts, as defined in paragraph (e) of this section, continuously 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;

(6) Is accredited; and

(7) Has been in existence for at least two years.

(b)(1) The Secretary considers an institution to have been in existence for two years only if—

(i) The institution has been legally authorized to provide, and has provided, a continuous educational program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the date of its eligibility application; and

(ii) The educational program that the institution provides on the date of its eligibility application is substantially the same in length and subject matter as the program that the institution provided during the 24 months preceding the date of its eligibility application.

(2)(i) The Secretary considers an institution to have provided a continuous educational program during the 24 months preceding the date of its eligibility application even if the institution did not provide that program during normal vacation periods, or periods when the institution temporarily

closed due to a natural disaster that directly affected the institution or the institution's students.

(ii) The Secretary considers an institution to have satisfied the provisions of paragraph (b)(1)(ii) of this section if the institution substantially changed the subject matter of the educational program it provided during that 24-month period because of new technology or the requirements of other Federal agencies.

(3) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary—

(i) Counts any period during which the applicant institution has been certified as a branch campus; and

(ii) Except as provided in paragraph (b)(3)(i) of this section, does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education, postsecondary vocational institution, or vocational school.

(c) An institution is physically located in a State if it has a campus or other instructional site in that State.

(d) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

(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)

[59 FR 22336, Apr. 29, 1994; 59 FR 32082, June 22, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 59 FR 61177, Nov. 29, 1994; 61 FR 29901, June 12, 1996; 61 FR 60569, Nov. 29, 1996; 64 FR 58615, Oct. 29, 1999; 74 FR 55932, Oct. 29, 2009; 76 FR 66946, Oct. 29, 2010]

§ 600.6 Postsecondary vocational institution.

(a) A postsecondary vocational institution is a public or private nonprofit educational institution that—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have the recognized equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is physically located;

(3) Is legally authorized to provide an educational program beyond secondary education in the State in which the institution is physically located in accordance with § 600.9;

(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;

(5) Is—

(i) Accredited or preaccredited; or

(ii) Approved by a State agency listed in the FEDERAL REGISTER in accordance with 34 CFR part 603, if the institution is a public postsecondary vocational educational institution that seeks to participate only in Federal assistance programs; and

(6) Has been in existence for at least two years.

(b)(1) The Secretary considers an institution to have been in existence for two years only if—

(i) The institution has been legally authorized to provide, and has provided, a continuous education or training program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the date of its eligibility application; and

(ii) The education or training program it provides on the date of its eligibility application is substantially the same in length and subject matter as the program it provided during the 24 months preceding the date of its eligibility application.

(2)(i) The Secretary considers an institution to have provided a continuous education or training program during the 24 months preceding the date of its eligibility application even if the institution did not provide that program during normal vacation periods, or periods when the institution temporarily closed due to a natural disaster that affected the institution or the institution's students.

(ii) The Secretary considers an institution to have satisfied the provisions of paragraph (b)(1)(ii) of this section if the institution substantially changed the subject matter of the educational program it provided during that 24-month period because of new technology or the requirements of other Federal agencies.

(3) In determining whether an applicant institution satisfies the requirement contained in paragraph (b)(1) of this section, the Secretary—

(i) Counts any period during which the applicant institution qualified as an eligible institution of higher education;

(ii) Counts any period during which the applicant institution was part of another eligible institution of higher education, provided that the applicant institution continues to be part of an eligible institution of higher education;

(iii) Counts any period during which the applicant institution has been certified as a branch campus; and

(iv) Except as provided in paragraph (b)(3)(iii) of this section, does not count any period during which the applicant institution was a part of another eligible proprietary institution of higher education or postsecondary vocational institution.

(c) An institution is physically located in a State or other instructional site if it has a campus or instructional site in that State.

(d) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

(Authority: 20 U.S.C. 1088, 1091, 1094(c)(3))

[59 FR 22336, Apr. 29, 1994, as amended at 64 FR 58616, Oct. 29, 1999; 74 FR 55933, Oct. 29, 2009; 75 FR 66946, Oct. 29, 2010]

§ 600.7 Conditions of institutional ineligibility.

(a) *General rule.* For purposes of title IV of the HEA, an educational institution that otherwise satisfies the requirements contained in §§ 600.4, 600.5, or 600.6 nevertheless does not qualify as an eligible institution under this part if—

(1) For its latest complete award year—

(i) More than 50 percent of the institution's courses were correspondence courses as calculated under paragraph (b) of this section;

(ii) Fifty percent or more of the institution's regular enrolled students were enrolled in correspondence courses;

(iii) More than twenty-five percent of the institution's regular enrolled students were incarcerated;

(iv) More than fifty percent of its regular enrolled students had neither a high school diploma nor the recognized equivalent of a high school diploma, and the institution does not provide a four-year or two-year educational program for which it awards a bachelor's

degree or an associate degree, respectively;

(2) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution—

(A) Files for relief in bankruptcy, or

(B) Has entered against it an order for relief in bankruptcy; or

(3) The institution, its owner, or its chief executive officer—

(i) Has pled guilty to, has pled *nolo contendere* to, or is found guilty of, a crime involving the acquisition, use, or expenditure of title IV, HEA program funds; or

(ii) Has been judicially determined to have committed fraud involving title IV, HEA program funds.

(b) *Special provisions regarding correspondence courses and students*—(1) *Calculating the number of correspondence courses.* For purposes of paragraphs (a)(1) (i) and (ii) of this section—

(i) A correspondence course may be a complete educational program offered by correspondence, or one course provided by correspondence in an on-campus (residential) educational program;

(ii) A course must be considered as being offered once during an award year regardless of the number of times it is offered during that year; and

(iii) A course that is offered both on campus and by correspondence must be considered two courses for the purpose of determining the total number of courses the institution provided during an award year.

(2) *Exceptions.* (i) The provisions contained in paragraphs (a)(1) (i) and (ii) of this section do not apply to an institution that qualifies as a ''technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market'' under section 3(3)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act of 1995.

(ii) The Secretary waives the limitation contained in paragraph (a)(1)(ii) of this section for an institution that offers a 2-year associate-degree or a 4-year bachelor's-degree program if the students enrolled in the institution's correspondence courses receive no more than 5 percent of the title IV, HEA program funds received by students at that institution.

(c) *Special provisions regarding incarcerated students*—(1) *Exception.* The Secretary may waive the prohibition contained in paragraph (a)(1)(iii) of this section, upon the application of an institution, if the institution is a nonprofit institution that provides four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma.

(2) *Waiver for entire institution.* If the nonprofit institution that applies for a waiver consists solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section for the entire institution.

(3) *Other waivers.* If the nonprofit institution that applies for a waiver does not consist solely of four-year or two-year educational programs for which it awards a bachelor's degree, an associate degree, or a postsecondary diploma, the Secretary waives the prohibition contained in paragraph (a)(1)(iii) of this section—

(i) For the four-year and two-year programs for which it awards a bachelor's degree, an associate degree or a postsecondary diploma; and

(ii) For the other programs the institution provides, if the incarcerated regular students enrolled in those other programs have a completion rate of 50 percent or greater.

(d) *Special provision for a nonprofit institution if more than 50 percent of its enrollment consists of students who do not have a high school diploma or its equivalent.* (1) Subject to the provisions contained in paragraphs (d)(2) and (d)(3) of this section, the Secretary waives the limitation contained in paragraph (a)(1)(iv) of this section for a nonprofit institution if that institution demonstrates to the Secretary's satisfaction that it exceeds that limitation because it serves, through contracts with Federal, State, or local government

agencies, significant numbers of students who do not have a high school diploma or its recognized equivalent.

(2) *Number of critical students.* The Secretary grants a waiver under paragraph (d)(1) of this section only if no more than 40 percent of the institution's enrollment of regular students consists of students who—

(i) Do not have a high school diploma or its equivalent; and

(ii) Are not served through contracts described in paragraph (d)(3) of this section.

(3) *Contracts with Federal, State, or local government agencies.* For purposes of granting a waiver under paragraph (d)(1) of this section, the contracts referred to must be with Federal, State, or local government agencies for the purpose of providing job training to low-income individuals who are in need of that training. An example of such a contract is a job training contract under the Job Training Partnership Act (JPTA).

(e) *Special provisions.* (1) For purposes of paragraph (a)(1)of this section, when counting regular students, the institution shall—

(i) Count each regular student without regard to the full-time or part-time nature of the student's attendance (i.e., ''head count'' rather than ''full-time equivalent'');

(ii) Count a regular student once regardless of the number of times the student enrolls during an award year; and

(iii) Determine the number of regular students who enrolled in the institution during the relevant award year by—

(A) Calculating the number of regular students who enrolled during that award year; and

(B) Excluding from the number of students in paragraph (e)(1)(iii)(A) of this section, the number of regular students who enrolled but subsequently withdrew or were expelled from the institution and were entitled to receive a 100 percent refund of their tuition and fees less any administrative fee that the institution is permitted to keep under its fair and equitable refund policy.

(2) For the purpose of calculating a completion rate under paragraph (c)(3)(ii) of this section, the institution shall—

(i) Determine the number of regular incarcerated students who enrolled in the other programs during the last completed award year;

(ii) Exclude from the number of regular incarcerated students determined in paragraph (e)(2)(i) of this section, the number of those students who enrolled but subsequently withdrew or were expelled from the institution and were entitled to receive a 100 percent refund of their tuition and fees, less any administrative fee the institution is permitted to keep under the institution's fair and equitable refund policy;

(iii) Exclude from the total obtained in paragraph (e)(2)(ii) of this section, the number of those regular incarcerated students who remained enrolled in the programs at the end of the applicable award year;

(iv) From the total obtained in paragraph (e)(2)(iii) of this section, determine the number of regular incarcerated students who received a degree, certificate, or other recognized educational credential awarded for successfully completing the program during the applicable award year; and

(v) Divide the total obtained in paragraph (e)(2)(iv) of this section by the total obtained in paragraph (e)(2)(iii) of this section and multiply by 100.

(f)(1) If the Secretary grants a waiver to an institution under this section, the waiver extends indefinitely provided that the institution satisfies the waiver requirements in each award year.

(2) If an institution fails to satisfy the waiver requirements for an award year, the institution becomes ineligible on June 30 of that award year.

(g)(1) For purposes of paragraph (a)(1) of this section, and any applicable waiver or exception under this section, the institution shall substantiate the required calculations by having the certified public accountant who prepares its audited financial statement under 34 CFR 668.15 or its title IV, HEA program compliance audit under 34 CFR 668.23 report on the accuracy of those determinations.

(2) The certified public accountant's report must be based on performing an

''attestation engagement'' in accordance with the American Institute of Certified Public Accountants (AICPA's) Statement on Standards for Attestation Engagements. The certified public accountant shall include that attestation report with or as part of the audit report referenced in paragraph (g)(1) of this section.

(3) The certified public accountant's attestation report must indicate whether the institution's determinations regarding paragraph (a)(1) of this section and any relevant waiver or exception under paragraphs (b), (c), and (d) of this section are accurate; *i.e.*, fairly presented in all material respects.

(h) *Notice to the Secretary*. An institution shall notify the Secretary—

(1) By July 31 following the end of an award year if it falls within one of the prohibitions contained in paragraph (a)(1)of this section, or fails to continue to satisfy a waiver or exception granted under this section; or

(2) Within 10 days if it falls within one of the prohibitions contained in paragraphs (a)(2) or (a)(3) of this section.

(i) *Regaining eligibility*. (1) If an institution loses its eligibility because of one of the prohibitions contained in paragraph (a)(1) of this section, to regain its eligibility, it must demonstrate—

(i) Compliance with all eligibility requirements;

(ii) That it did not fall within any of the prohibitions contained in paragraph (a)(1) of this section for at least one award year; and

(iii) That it changed its administrative policies and practices to ensure that it will not fall within any of the prohibitions contained in paragraph (a)(1) of this section.

(2) If an institution loses its eligibility because of one of the prohibitions contained in paragraphs (a)(2) and (a)(3) of this section, this loss is permanent. The institution's eligibility cannot be reinstated.

(Approved by the Office of Management and Budget under control number 1840–0098)

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

[59 FR 22336, Apr. 29, 1994; 59 FR 32082, June 22, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 60 FR 34430, June 30, 1995; 64 FR 58616, Oct. 29, 1999; 71 FR 45692, Aug. 9, 2006]

§ 600.8 Treatment of a branch campus.

A branch campus of an eligible proprietary institution of higher education or a postsecondary vocational institution must be in existence for at least two years as a branch campus after the branch is certified as a branch campus before seeking to be designated as a main campus or a free-standing institution.

(Authority: 20 U.S.C. 1099c)

[64 FR 58616, Oct. 29, 1999, as amended at 67 FR 67070, Nov. 1, 2002]

§ 600.9 State authorization.

(a)(1) An institution described under §§ 600.4, 600.5, and 600.6 is legally authorized by a State if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws, and the institution meets the provisions of paragraphs (a)(1)(i), (a)(1)(ii), or (b) of this section.

(i)(A) The institution is established by name as an educational institution by a State through a charter, statute, constitutional provision, or other action issued by an appropriate State agency or State entity and is authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

(B) The institution complies with any applicable State approval or licensure requirements, except that the State may exempt the institution from any State approval or licensure requirements based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary or based upon the institution being in operation for at least 20 years.

(ii) If an institution is established by a State on the basis of an authorization to conduct business in the State or to operate as a nonprofit charitable

organization, but not established by name as an educational institution under paragraph (a)(1)(i) of this section, the institution—

(A) By name, must be approved or licensed by the State to offer programs beyond secondary education, including programs leading to a degree or certificate; and

(B) May not be exempt from the State's approval or licensure requirements based on accreditation, years in operation, or other comparable exemption.

(2) The Secretary considers an institution to meet the provisions of paragraph (a)(1) of this section if the institution is authorized by name to offer educational programs beyond secondary education by—

(i) The Federal Government; or

(ii) As defined in 25 U.S.C. 1802(2), an Indian tribe, provided that the institution is located on tribal lands and the tribal government has a process to review and appropriately act on complaints concerning an institution and enforces applicable tribal requirements or laws.

(b)(1) Notwithstanding paragraph (a)(1)(i) and (ii) of this section, an institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt from State authorization as a religious institution under the State constitution or by State law.

(2) For purposes of paragraph (b)(1) of this section, a religious institution is an institution that—

(i) Is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation; and

(ii) Awards only religious degrees or certificates including, but not limited to, a certificate of Talmudic studies, an associate of Biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.

(c) If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State's approval upon request.

(Authority: 20 U.S.C. 1001 and 1002)

[75 FR 66946, Oct. 29, 2010]

EFFECTIVE DATE NOTE: At 81 FR 92262, Dec. 19, 2016, § 600.9 was amended by revising paragraph (c) and adding paragraph (d), effective July 1, 2020. For the convenience of the user, the revised and added text is set forth as follows:

§ 600.9 State authorization.

* * * * *

(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students residing in a State in which the institution is not physically located or in which the institution is otherwise subject to that State's jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, the institution must meet any of that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document the State's approval to the Secretary; or

(ii) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(2) If an institution that meets the requirements under paragraph (a)(1) of this section offers postsecondary education through distance education or correspondence courses to students residing in a State in which the institution is not physically located, for the institution to be considered legally authorized in that State, the institution must document that there is a State process for review and appropriate action on complaints from any of those enrolled students concerning the institution—

(i) In each State in which the institution's enrolled students reside; or

(ii) Through a State authorization reciprocity agreement which designates for this

purpose either the State in which the institution's enrolled students reside or the State in which the institution's main campus is located.

(d) An additional location or branch campus of an institution that meets the requirements under paragraph (a)(1) of this section and that is located in a foreign country, *i.e.*, not in a State, must comply with §§ 600.8, 600.10, 600.20, and 600.32, and the following requirements:

(1) For any additional location at which 50 percent or more of an educational program (as defined in § 600.2) is offered, or will be offered, or at a branch campus—

(i) The additional location or branch campus must be legally authorized by an appropriate government authority to operate in the country where the additional location or branch campus is physically located, unless the additional location or branch campus is physically located on a U.S. military base, facility, or area that the foreign country has granted the U.S. military to use and the institution can demonstrate that it is exempt from obtaining such authorization from the foreign country;

(ii) The institution must provide to the Secretary, upon request, documentation of such legal authorization to operate in the foreign country, demonstrating that the foreign governmental authority is aware that the additional location or branch campus provides postsecondary education and that the government authority does not object to those activities;

(iii) The additional location or branch campus must be approved by the institution's recognized accrediting agency in accordance with §§ 602.24(a) and 602.22(a)(2)(viii), as applicable;

(iv) The additional location or branch campus must meet any additional requirements for legal authorization in that foreign country as the foreign country may establish;

(v) The institution must report to the State in which the main campus of the institution is located at least annually, or more frequently if required by the State, the establishment or operation of each foreign additional location or branch campus; and

(vi) The institution must comply with any limitations the State places on the establishment or operation of the foreign additional location or branch campus.

(2) An additional location at which less than 50 percent of an educational program (as defined in § 600.2) is offered or will be offered must meet the requirements for legal authorization in that foreign country as the foreign country may establish.

(3) In accordance with the requirements of 34 CFR 668.41, the institution must disclose to enrolled and prospective students at foreign additional locations and foreign branch campuses the information regarding the student complaint process described in 34 CFR 668.43(b), of the State in which the main campus of the institution is located.

(4) If the State in which the main campus of the institution is located limits the authorization of the institution to exclude the foreign additional location or branch campus, the foreign additional location or branch campus is not considered to be legally authorized by the State.

§ 600.10 Date, extent, duration, and consequence of eligibility.

(a) *Date of eligibility*. (1) If the Secretary determines that an applicant institution satisfies all the statutory and regulatory eligibility requirements, the Secretary considers the institution to be an eligible institution as of the date—

(i) The Secretary signs the institution's program participation agreement described in 34 CFR part 668, subpart B, for purposes of participating in any title IV, HEA program; and

(ii) The Secretary receives all the information necessary to make that determination for purposes other than participating in any title IV, HEA program.

(2) [Reserved]

(b) *Extent of eligibility*. (1) If the Secretary determines that the entire applicant institution, including all its locations and all its educational programs, satisfies the applicable requirements of this part, the Secretary extends eligibility to all educational programs and locations identified on the institution's application for eligibility.

(2) If the Secretary determines that only certain educational programs or certain locations of an applicant institution satisfy the applicable requirements of this part, the Secretary extends eligibility only to those educational programs and locations that meet those requirements and identifies the eligible educational programs and locations in the eligibility notice sent to the institution under § 600.21.

(3) Eligibility does not extend to any location that an institution establishes after it receives its eligibility designation if the institution provides at least 50 percent of an educational program at that location, unless—

(i) The Secretary approves that location under § 600.20(e)(4); or

(ii) The location is licensed and accredited, the institution does not have

to apply to the Secretary for approval of that location under § 600.20(c), and the institution has reported to the Secretary that location under § 600.21.

(c) *Educational programs.* (1) An eligible institution that seeks to establish the eligibility of an educational program must—

(i) For a gainful employment program under 34 CFR part 668, subpart Q of this chapter, update its application under § 600.21, and meet any time restrictions that prohibit the institution from establishing or reestablishing the eligibility of the program as may be required under 34 CFR 668.414;

(ii) Pursuant to a requirement regarding additional programs included in the institution's program participation agreement under 34 CFR 668.14, obtain the Secretary's approval; and

(iii) For a direct assessment program under 34 CFR 668.10, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval.

(2) Except as provided under § 600.20(c), an eligible institution does not have to obtain the Secretary's approval to establish the eligibility of any program that is not described in paragraph (c)(1)(i), (ii), or (iii) of this section.

(3) An institution must repay to the Secretary all HEA program funds received by the institution for an educational program, and all the title IV, HEA program funds received by or on behalf of students who enrolled in that program if the institution—

(i) Fails to comply with the requirements in paragraph (c)(1) of this section; or

(ii) Incorrectly determines that an educational program that is not subject to approval under paragraph (c)(1) of this section is an eligible program for title IV, HEA program purposes.

(d) *Duration of eligibility.* (1) If an institution participates in the title IV, HEA programs, the Secretary's designation of the institution as an eligible institution under the title IV, HEA programs expires when the institution's program participation agreement, as described in 34 CFR part 668, subpart B, expires.

(2) If an institution participates in an HEA program other than a title IV, HEA program, the Secretary's designation of the institution as an eligible institution, for purposes of that non-title IV, HEA program, does not expire as long as the institution continues to satisfy the statutory and regulatory requirements governing its eligibility.

(e) *Consequence of eligibility.* (1) If, as a part of its institutional eligibility application, an institution indicates that it wishes to participate in a title IV, HEA program and the Secretary determines that the institution satisfies the applicable statutory and regulatory requirements governing institutional eligibility, the Secretary will determine whether the institution satisfies the standards of administrative capability and financial responsibility contained in 34 CFR part 668, subpart B.

(2) If, as part of its institutional eligibility application, an institution indicates that it does not wish to participate in any title IV, HEA program and the Secretary determines that the institution satisfies the applicable statutory and regulatory requirements governing institutional eligibility, the institution is eligible to apply to participate in any HEA program listed by the Secretary in the eligibility notice it receives under § 600.21. However, the institution is not eligible to participate in those programs, or receive funds under those programs, merely by virtue of its designation as an eligible institution under this part.

(Approved by the Office of Management and Budget under control number 1845–0098)

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, and 1141)

[59 FR 22336, Apr. 29, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 65 FR 65671, Nov. 1, 2000; 71 FR 45692, Aug. 9, 2006; 75 FR 66676, Oct. 29, 2010; 79 FR 65006, Oct. 31, 2014]

EFFECTIVE DATE NOTE: At 84 FR 31452, July 1, 2019, § 600.10 was amended by revising paragraphs (c)(1) and (c)(2), effective July 1, 2020. For the convenience of the user, the revised text is set forth as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) *Educational programs.* (1) An eligible institution that seeks to establish the eligibility of an educational program must—

(i) Pursuant to a requirement regarding additional programs included in the institution's program participation agreement under 34 CFR 668.14, obtain the Secretary's approval;

(ii) For a direct assessment program under 34 CFR 668.10, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval; and

(iii) For an undergraduate program that is at least 300 clock hours but less than 600 clock hours and does not admit as regular students only persons who have completed the equivalent of an associate degree under 34 CFR 668.8(d)(3), obtain the Secretary's approval.

(2) Except as provided under § 600.20(c), an eligible institution does not have to obtain the Secretary's approval to establish the eligibility of any program that is not described in paragraph (c)(1) of this section.

§ 600.11 Special rules regarding institutional accreditation or preaccreditation.

(a) *Change of accrediting agencies.* For purposes of §§ 600.4(a)(5)(i), 600.5(a)(6), and 600.6(a)(5)(i), the Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is in the process of changing its accrediting agency, unless the institution provides to the Secretary—

(1) All materials related to its prior accreditation or preaccreditation; and

(2) Materials demonstrating reasonable cause for changing its accrediting agency.

(b) *Multiple accreditation.* The Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is accredited or preaccredited as an institution by more than one accrediting agency, unless the institution—

(1) Provides to each such accrediting agency and the Secretary the reasons for that multiple accreditation or preaccreditation;

(2) Demonstrates to the Secretary reasonable cause for that multiple accreditation or preaccreditation; and

(3) Designates to the Secretary which agency's accreditation or preaccreditation the institution uses to establish its eligibility under this part.

(c) *Loss of accreditation or preaccreditation.* (1) An institution may not be considered eligible for 24 months after it has had its accreditation or preaccreditation withdrawn, revoked, or otherwise terminated for cause, unless the accrediting agency that took that action rescinds that action.

(2) An institution may not be considered eligible for 24 months after it has withdrawn voluntarily from its accreditation or preaccreditation status under a show-cause or suspension order issued by an accrediting agency, unless that agency rescinds its order.

(d) *Religious exception.* (1) If an otherwise eligible institution loses its accreditation or preaccreditation, the Secretary considers the institution to be accredited or preaccredited for purposes of complying with the provisions of §§ 600.4, 600.5, and 600.6 if the Secretary determines that its loss of accreditation or preaccreditation—

(i) Is related to the religious mission or affiliation of the institution; and

(ii) Is not related to its failure to satisfy the accrediting agency's standards.

(2) If the Secretary considers an unaccredited institution to be accredited or preaccredited under the provisions of paragraph (d)(1) of this section, the Secretary will consider that unaccredited institution to be accredited or preaccredited for a period sufficient to allow the institution to obtain alternative accreditation or preaccreditation, except that period may not exceed 18 months.

(Authority: 20 U.S.C. 1099b)

Subpart B—Procedures for Establishing Eligibility

SOURCE: 59 FR 22336, Apr. 29, 1994, unless otherwise noted.

§ 600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

(a) *Initial eligibility application.* (1) An institution that wishes to establish its eligibility to participate in any HEA program must submit an application to the Secretary for a determination that it qualifies as an eligible institution under this part.

(2) If the institution also wishes to be certified to participate in the title IV, HEA programs, it must indicate that

intent on the application, and submit all the documentation indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in 34 CFR part 668, subparts B and L.

(3) A freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, must include in its application to participate—

(i)(A) A list of all medical school educational sites and where they are located, including all sites at which its students receive clinical training, except those clinical training sites that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks; and

(B) The type of clinical training (core, required clinical rotation, not required clinical rotation) offered at each site listed on the application in accordance with paragraph (a)(3)(i)(A) of this section; and

(ii) Whether the school offers—

(A) Only post-baccalaureate/equivalent medical programs, as defined in § 600.52;

(B) Other types of programs that lead to employment as a doctor of osteopathic medicine or doctor of medicine; or

(C) Both; and

(iii) Copies of the formal affiliation agreements with hospitals or clinics providing all or a portion of a clinical training program required under § 600.55(e)(1).

(b) *Reapplication*. (1) A currently designated eligible institution that is not participating in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part if the Secretary requests the institution to reapply. If the institution wishes to be certified to participate in the title IV, HEA programs, it must submit an application to the Secretary and must submit all the supporting documentation indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in subparts B and L of 34 CFR part 668.

(2) A currently designated eligible institution that participates in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part and in 34 CFR part 668 if the institution wishes to—

(i) Continue to participate in the title IV, HEA programs beyond the scheduled expiration of the institution's current eligibility and certification designation;

(ii) Reestablish eligibility and certification as a private nonprofit, private for-profit, or public institution following a change in ownership that results in a change in control as described in § 600.31; or

(iii) Reestablish eligibility and certification after the institution changes its status as a proprietary, nonprofit, or public institution.

(3) A freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, must include in its reapplication to participate—

(i)(A) A list of all of the foreign graduate medical school's educational sites and where they are located, including all sites at which its students receive clinical training, except those clinical training sites that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks; and

(B) The type of clinical training (core, required clinical rotation, not required clinical rotation) offered at each site listed on the application in accordance with paragraph (b)(3)(i)(A) of this section; and

(ii) Whether the school offers—

(A) Only post-baccalaureate/equivalent medical programs, as defined in § 600.52;

(B) Other types of programs that lead to employment as a doctor of osteopathic medicine or doctor of medicine; or

(C) Both; and

(iii) Copies of the formal affiliation agreements with hospitals or clinics providing all or a portion of a clinical training program required under § 600.55(e)(1).

(c) *Application to expand eligibility.* A currently designated eligible institution that wishes to expand the scope of its eligibility and certification and disburse title IV, HEA Program funds to students enrolled in that expanded scope must apply to the Secretary and wait for approval to—

(1) Add an educational program or a location at which the institution offers or will offer 50 percent or more of an educational program if one of the following conditions applies, otherwise it must report to the Secretary under § 600.21:

(i) The institution participates in the title IV, HEA programs under a provisional certification, as provided in 34 CFR 668.13.

(ii) The institution receives title IV, HEA program funds under the reimbursement or cash monitoring payment method, as provided in 34 CFR part 668, subpart K.

(iii) The institution acquires the assets of another institution that provided educational programs at that location during the preceding year and participated in the title IV, HEA programs during that year.

(iv) The institution would be subject to a loss of eligibility under 34 CFR 668.188 if it adds that location.

(v) The Secretary notifies, or has notified, the institution that it must apply for approval of an additional educational program or a location under § 600.10(c).

(2) Increase its level of program offering (*e.g.*, adding graduate degree programs when it previously offered only baccalaureate degree programs);

(3) Add an educational program if the institution is required to apply to the Secretary for approval under § 600.10(c);

(4) Add a branch campus at a location that is not currently included in the institution's eligibility and certification designation;

(5) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, add a location that offers all or a portion of the foreign graduate medical school's core clinical training or required clinical rotations, except for those locations that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA); or

(6) Convert an eligible location to a branch campus.

(d) *Notice and application.* (1) *Notice and application procedures.* (i) To satisfy the requirements of paragraphs (a), (b), and (c) of this section, an institution must notify the Secretary of its intent to offer an additional educational program, or provide an application to expand its eligibility, in a format prescribed by the Secretary and provide all the information and documentation requested by the Secretary to make a determination of its eligibility and certification.

(ii)(A) An institution that notifies the Secretary of its intent to offer an educational program under paragraph (c)(3) of this section must ensure that the Secretary receives the notice described in paragraph (d)(2) of this section at least 90 days before the first day of class of the educational program.

(B) An institution that submits a notice in accordance with paragraph (d)(1)(ii)(A) of this section is not required to obtain approval to offer the additional educational program unless the Secretary alerts the institution at least 30 days before the first day of class that the program must be approved for title IV, HEA program purposes. If the Secretary alerts the institution that the additional educational program must be approved, the Secretary will treat the notice provided about the additional educational program as an application for that program.

(C) If an institution does not provide timely notice in accordance with paragraph (d)(1)(ii)(A) of this section, the institution must obtain approval of the additional educational program from the Secretary for title IV, HEA program purposes.

(D) If an additional educational program is required to be approved by the Secretary for title IV, HEA program purposes under paragraph (d)(1)(ii)(B) or (C) of this section, the Secretary may grant approval, or request further information prior to making a determination of whether to approve or

deny the additional educational program.

(E) When reviewing an application under paragraph (d)(1)(ii)(B) of this section, the Secretary will take into consideration the following:

(*1*) The institution's demonstrated financial responsibility and administrative capability in operating its existing programs.

(*2*) Whether the additional educational program is one of several new programs that will replace similar programs currently provided by the institution, as opposed to supplementing or expanding the current programs provided by the institution.

(*3*) Whether the number of additional educational programs being added is inconsistent with the institution's historic program offerings, growth, and operations.

(*4*) Whether the process and determination by the institution to offer an additional educational program that leads to gainful employment in a recognized occupation is sufficient.

(F)(*1*) If the Secretary denies an application from an institution to offer an additional educational program, the denial will be based on the factors described in paragraphs (d)(1)(ii)(E)(2), (3), and (4) of this section, and the Secretary will explain in the denial how the institution failed to demonstrate that the program is likely to lead to gainful employment in a recognized occupation.

(*2*) If the Secretary denies the institution's application to add an additional educational program, the Secretary will permit the institution to respond to the reasons for the denial and request reconsideration of the denial.

(2) *Notice format.* An institution that notifies the Secretary of its intent to offer an additional educational program under paragraph (c)(3) of this section must at a minimum—

(i) Describe in the notice how the institution determined the need for the program and how the program was designed to meet local market needs, or for an online program, regional or national market needs. This description must contain any wage analysis the institution may have performed, including any consideration of Bureau of Labor Statistics data related to the program;

(ii) Describe in the notice how the program was reviewed or approved by, or developed in conjunction with, business advisory committees, program integrity boards, public or private oversight or regulatory agencies, and businesses that would likely employ graduates of the program;

(iii) Submit documentation that the program has been approved by its accrediting agency or is otherwise included in the institution's accreditation by its accrediting agency, or comparable documentation if the institution is a public postsecondary vocational institution approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation; and

(iv) Provide the date of the first day of class of the new program.

(e) *Secretary's response to applications.* (1) If the Secretary receives an application under paragraph (a) or (b)(1) of this section, the Secretary notifies the institution—

(i) Whether the applicant institution qualifies in whole or in part as an eligible institution under the appropriate provisions in §§ 600.4 through 600.7; and

(ii) Of the locations and educational programs that qualify as the eligible institution if only a portion of the applicant qualifies as an eligible institution;

(2) If the Secretary receives an application under paragraphs (a) or (b) of this section and that institution applies to participate in the title IV, HEA programs, the Secretary notifies the institution—

(i) Whether the institution is certified to participate in those programs;

(ii) Of the title IV, HEA programs in which it is eligible to participate;

(iii) Of the title IV, HEA programs in which it is eligible to apply for funds;

(iv) Of the effective date of its eligibility to participate in those programs; and

(v) Of the conditions under which it may participate in those programs;

(3) If the Secretary receives an application under paragraph (b)(2) of this section, the Secretary notifies the institution whether it continues to be certified, or whether it reestablished

its eligibility and certification to participate in the title IV, HEA programs and the scope of such approval.

(4) If the Secretary receives an application under paragraph (c)(1) of this section for an additional location, the Secretary notifies the institution whether the location is eligible or ineligible to participate in the title IV, HEA programs, and the date of eligibility if the location is determined eligible;

(5) If the Secretary receives an application under paragraph (c)(2) of this section for an increase in the level of program offering, or for an additional educational program under paragraph (c)(3) of this section, the Secretary notifies the institution whether the program qualifies as an eligible program, and if the program qualifies, the date of eligibility; and

(6) If the Secretary receives an application under paragraphs (c)(4) or (c)(5) of this section to have a branch campus certified to participate in the title IV, HEA programs as a branch campus, the Secretary notifies the institution whether that branch campus is certified to participate and the date that the branch campus is eligible to begin participation.

(f) *Disbursement rules related to applications.* (1)(i) Except as provided under paragraph (f)(1)(ii) of this section and 34 CFR 668.26, if an institution submits an application under paragraph (b)(2)(i) of this section because its participation period is scheduled to expire, after that expiration date the institution may not disburse title IV, HEA program funds to students attending that institution until the institution receives the Secretary's notification that the institution is again eligible to participate in those programs.

(ii) An institution described in paragraph (f)(1)(i) of this section may disburse title IV, HEA program funds to its students if the institution submits to the Secretary a materially complete renewal application in accordance with the provisions of 34 CFR 668.13(b)(2), and has not received a final decision from the Department on that application.

(2)(i) Except as provided under paragraph (f)(2)(ii) of this section and 34 CFR 668.26, if a private nonprofit, private for-profit, or public institution submits an application under paragraph (b)(2)(ii) or (b)(2)(iii) of this section because it has undergone or will undergo a change in ownership that results in a change of control or a change in status, the institution may not disburse title IV, HEA program funds to students attending that institution after the change of ownership or status until the institution receives the Secretary's notification that the institution is eligible to participate in those programs.

(ii) An institution described in paragraph (f)(2)(i) of this section may disburse title IV, HEA program funds to its students if the Secretary issues a provisional extension of certification under paragraph (g) of this section.

(3) If an institution must apply to the Secretary under paragraphs (c)(1) through (c)(4) of this section, the institution may not disburse title IV, HEA program funds to students attending the subject location, program, or branch until the institution receives the Secretary's notification that the location, program, or branch is eligible to participate in the title IV, HEA programs.

(4) If an institution applies to the Secretary under paragraph (c)(5) of this section to convert an eligible location to a branch campus, the institution may continue to disburse title IV, HEA program funds to students attending that eligible location.

(5) If an institution does not apply to the Secretary to obtain the Secretary's approval of a new location, program, increased level of program offering, or branch, and the location, program, or branch does not qualify as an eligible location, program, or branch of that institution under this part and 34 CFR part 668, the institution is liable for all title IV, HEA program funds it disburses to students enrolled at that location or branch or in that program.

(g) *Application for provisional extension of certification.* (1) If a private nonprofit institution, a private for-profit institution, or a public institution participating in the title IV, HEA programs undergoes a change in ownership that results in a change of control as described in 34 CFR 600.31, the Secretary

may continue the institution's participation in those programs on a provisional basis, if the institution under the new ownership submits a ''materially complete application'' that is received by the Secretary no later than 10 business days after the day the change occurs.

(2) For purposes of this section, a private nonprofit institution, a private for-profit institution, or a public institution submits a materially complete application if it submits a fully completed application form designated by the Secretary supported by—

(i) A copy of the institution's State license or equivalent document that—as of the day before the change in ownership—authorized or will authorize the institution to provide a program of postsecondary education in the State in which it is physically located;

(ii) A copy of the document from the institution's accrediting association that—as of the day before the change in ownership—granted or will grant the institution accreditation status, including approval of any non-degree programs it offers;

(iii) Audited financial statements of the institution's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23; and

(iv) Audited financial statements of the institution's new owner's two most recently completed fiscal years that are prepared and audited in accordance with the requirements of 34 CFR 668.23, or equivalent information for that owner that is acceptable to the Secretary.

(h) *Terms of the extension.* (1) If the Secretary approves the institution's materially complete application, the Secretary provides the institution with a provisional Program Participation Agreement (PPA). The provisional PPA extends the terms and conditions of the program participation agreement that were in effect for the institution before its change of ownership.

(2) The provisional PPA expires on the earlier of—

(i) The date on which the Secretary signs a new program participation agreement;

(ii) The date on which the Secretary notifies the institution that its application is denied; or

(iii) The last day of the month following the month in which the change of ownership occurred, unless the provisions of paragraph (h)(3) of this section apply.

(3) If the provisional PPA will expire under the provisions of paragraph (h)(2)(iii) of this section, the Secretary extends the provisional PPA on a month-to-month basis after the expiration date described in paragraph (h)(2)(iii) of this section if, prior to that expiration date, the institution provides the Secretary with—

(i) A ''same day'' balance sheet showing the financial position of the institution, as of the date of the ownership change, that is prepared in accordance with Generally Accepted Accounting Principles (GAAP) published by the Financial Accounting Standards Board and audited in accordance with Generally Accepted Government Auditing Standards (GAGAS) published by the U.S. General Accounting Office;

(ii) If not already provided, approval of the change of ownership from the State in which the institution is located by the agency that authorizes the institution to legally provide postsecondary education in that State;

(iii) If not already provided, approval of the change of ownership from the institution's accrediting agency; and

(iv) A default management plan unless the institution is exempt from providing that plan under 34 CFR 668.14(b)(15).

(Approved by the Office of Management and Budget under control number 1845–0012)

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, and 1099c)

[65 FR 65671, Nov. 1, 2000, as amended at 75 FR 66677, Oct. 29, 2010; 75 FR 67192, Nov. 1, 2010; 79 FR 65006, Oct. 31, 2014]

§ 600.21 Updating application information.

(a) *Reporting requirements.* Except as provided in paragraph (b) of this section, an eligible institution must report to the Secretary in a manner prescribed by the Secretary no later than 10 days after the change occurs, of any change in the following:

(1) Its name, the name of a branch, or the name of a previously reported location.

(2) Its address, the address of a branch, or the address of a previously reported location.

(3) Its establishment of an accredited and licensed additional location at which it offers or will offer 50 percent or more of an educational program if the institution wants to disburse title IV, HEA program funds to students enrolled at that location, under the provisions in paragraph (d) of this section.

(4) Except as provided in 34 CFR 668.10, the way it measures program length (*e.g.*, from clock hours to credit hours, or from semester hours to quarter hours).

(5) A decrease in the level of program offering (*e.g.* the institution drops its graduate programs).

(6) A person's ability to affect substantially the actions of the institution if that person did not previously have this ability. The Secretary considers a person to have this ability if the person—

(i) Holds alone or together with another member or members of his or her family, at least a 25 percent ''ownership interest'' in the institution as defined in § 600.31(b);

(ii) Represents or holds, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement at least a 25 percent ''ownership interest'' in the institution, as defined in § 600.31(b); or

(iii) Is a general partner, the chief executive officer, or chief financial officer of the institution.

(7) The individual the institution designates under 34 CFR 668.16(b)(1) as its title IV, HEA Program administrator.

(8) The closure of a branch campus or additional location that the institution was required to report to the Secretary.

(9) The governance of a public institution.

(10) For a freestanding foreign graduate medical school, or a foreign institution that includes a foreign graduate medical school, the school adds a location that offers all or a portion of the school's clinical rotations that are not required, except for those that are included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA), or that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks.

(11) For any gainful employment program under 34 CFR part 668, subpart Q—

(i) Establishing the eligibility or reestablishing the eligibility of the program;

(ii) Discontinuing the program's eligibility under 34 CFR 668.410;

(iii) Ceasing to provide the program for at least 12 consecutive months;

(iv) Losing program eligibility under § 600.40;

(v) Changing the program's name, CIP code, as defined in 34 CFR 668.402, or credential level; or

(vi) Updating the certification pursuant to § 668.414(b).

(b) *Additional reporting from institutions owned by publicly-traded corporations.* An institution that is owned by a publicly-traded corporation must report to the Secretary any change in the information described in paragraph (a)(6) of this section when it notifies its accrediting agency, but no later than 10 days after the institution learns of the change.

(c) *Secretary's response to reporting.* The Secretary notifies an institution if any reported changes affects the institution's eligibility, and the effective date of that change.

(d) *Disbursement rules related to additional locations.* When an institution must report to the Secretary about an additional location under paragraph (a)(3) of this section, the institution may not disburse title IV, HEA funds to students at that location before it reports to the Secretary about that location. Unless it is an institution that must apply to the Secretary under § 600.20(c)(1), once it reports to the Secretary about that location, the institution may disburse those funds to those students if that location is licensed and accredited.

(e) *Consequence of failure to report.* An institution's failure to inform the Secretary of a change described in paragraph (a) of this section within the

time period stated in that paragraph may result in adverse action against the institution.

(f) *Definition.* A family member includes a person's—

(1) Parent or stepparent, sibling or step-sibling, spouse, child or stepchild, or grandchild or step-grandchild;

(2) Spouse's parent or stepparent, sibling or step-sibling, child or stepchild, or grandchild or step-grandchild;

(3) Child's spouse; and

(4) Sibling's spouse.

(Approved by the Office of Management and Budget under control number 1845–0012)

(Authority: 20 U.S.C. 1094, 1099b)

[65 FR 65673, Nov. 1, 2000, as amended at 67 FR 67070, Nov. 1, 2002; 71 FR 45692, Aug. 9, 2006; 75 FR 67193, Nov. 1, 2010; 79 FR 65006, Oct. 31, 2014]

EFFECTIVE DATE NOTE: At 84 FR 31452, July 1, 2019, § 600.21 was amended by revising the introductory text of paragraph (a)(11), effective July 1, 2020. For the convenience of the user, the revised text is set forth as follows:

§ 600.21 Updating application information.

(a) * * *

(11) For any program that is required to provide training that prepares a student for gainful employment in a recognized occupation—

Subpart C—Maintaining Eligibility

SOURCE: 59 FR 22336, Apr. 29, 1994, unless otherwise noted.

§ 600.30 [Reserved]

§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

(a)(1) Except as provided in paragraph (a)(2) of this section, a private nonprofit, private for-profit, or public institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control. A change in ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns the institution or the parent corporation of that entity, acquires or loses the ability to control the institution.

(2) If a private nonprofit, private for-profit, or public institution has undergone a change in ownership that results in a change in control, the Secretary may, under the provisions of § 600.20(g) and (h), continue the institution's participation in the title IV, HEA programs on a provisional basis, provided that the institution submits, under the provisions of § 600.20(g), a materially complete application—

(i) No later than 10 business days after the change occurs; or

(ii) For an institution owned by a publicly-traded corporation, no later than 10 business days after the institution knew, or should have known of the change based upon SEC filings, that the change occurred.

(3) In order to reestablish eligibility and to resume participation in the title IV, HEA programs, the institution must demonstrate to the Secretary that after the change in ownership and control—

(i) The institution satisfies all the applicable requirements contained in §§ 600.4, 600.5, and 600.6, except that if the institution is a proprietary institution of higher education or postsecondary vocational institution, it need not have been in existence for two years before seeking eligibility; and

(ii) The institution qualifies to be certified to participate under 34 CFR part 668, subpart B.

(b) *Definitions.* The following definitions apply to terms used in this section:

Closely-held corporation. Closely-held corporation (including the term close corporation) means—

(1) A corporation that qualifies under the law of the State of its incorporation as a closely-held corporation; or

(2) If the State of incorporation has no definition of closely-held corporation, a corporation the stock of which—

(i) Is held by no more than 30 persons; and

(ii) Has not been and is not planned to be publicly offered.

Control. Control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person,

whether through the ownership of voting securities, by contract, or otherwise.

Ownership or ownership interest. (1) Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from the operation of an institution or its corporate parent.

(2) Ownership or ownership interest does not include an ownership interest held by—

(i) A mutual fund that is regularly and publicly traded;

(ii) A U.S. institutional investor, as defined in 17 CFR 240.15a–6(b)(7);

(iii) A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or corporate parent are included in the plan; or

(iv) An Employee Stock Ownership Plan (ESOP).

Parent. The parent or parent corporation of a specified corporation is the corporation or partnership that controls the specified corporation directly or indirectly through one or more intermediaries.

Person. Person includes a legal person (corporation or partnership) or an individual.

Wholly-owned subsidiary. A wholly-owned subsidiary is one substantially all of whose outstanding voting securities are owned by its parent together with the parent's other wholly-owned subsidiaries.

(c) *Standards for identifying changes of ownership and control*—(1) *Closely-held corporation.* A change in ownership and control occurs when—

(i) A person acquires more than 50 percent of the total outstanding voting stock of the corporation;

(ii) A person who holds an ownership interest in the corporation acquires control of more than 50 percent of the outstanding voting stock of the corporation; or

(iii) A person who holds or controls 50 percent or more of the total outstanding stock of the corporation ceases to hold or control that proportion of the stock of the corporation.

(2) *Publicly traded corporations required to be registered with the Securities and Exchange Commission (SEC).* A change in ownership and control occurs when—

(i) A person acquires such ownership and control of the corporation so that the corporation is required to file a Form 8K with the SEC notifying that agency of the change in control; or

(ii) (A) A person who is a controlling shareholder of the corporation ceases to be a controlling shareholder. A controlling shareholder is a shareholder who holds or controls through agreement both 25 percent or more of the total outstanding voting stock of the corporation and more shares of voting stock than any other shareholder. A controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as a U.S. institutional investor, as defined in 17 CFR 240.15a–6(b)(7), held in mutual funds, held through a profit-sharing plan, or held in an Employee Stock Ownership Plan (ESOP).

(B) When a change of ownership occurs as a result of paragraph (c)(2)(ii)(A) of this section, the institution may submit its most recent quarterly financial statement as filed with the SEC, along with copies of all other SEC filings made after the close of the fiscal year for which a compliance audit has been submitted to the Department of Education, instead of the ''same day'' balance sheet.

(C) If a publicly-traded institution is provisionally certified due to a change in ownership under paragraph (c)(2)(ii) of this section, and that institution experiences another change of ownership under paragraph (c)(2)(ii) of this section, an approval of the subsequent change in ownership does not extend the original expiration date for the provisional certification provided that any current controlling shareholder was listed on the change of ownership application for which the original provisional approval was granted.

(3) *Other corporations.* A change in ownership and control of a corporation that is neither closely-held nor required to be registered with the SEC occurs when—

(i) A person who has or acquires an ownership interest acquires both control of at least 25 percent of the total

outstanding voting stock of the corporation and control of the corporation;

(ii) A person who holds both ownership or control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation, ceases to own or control that proportion of the stock of the corporation, or to control the corporation; or

(iii) For a membership corporation, a person who is or becomes a member acquires or loses control of 25 percent of the voting interests of the corporation and control of the corporation.

(4) *Partnership or sole proprietorship.* A change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described in this section.

(5) *Parent corporation.* An institution that is a wholly-owned subsidiary changes ownership and control when the parent corporation changes ownership and control as described in this section.

(6) *Nonprofit institution.* A nonprofit institution changes ownership and control when a change takes place that is described in paragraph (d) of this section.

(7) *Public institution.* The Secretary does not consider that a public institution undergoes a change in ownership that results in a change of control if there is a change in governance and the institution after the change remains a public institution, provided—

(i) The new governing authority is in the same State as included in the institution's program participation agreement; and

(ii) The new governing authority has acknowledged the public institution's continued responsibilities under its program participation agreement.

(d) *Covered transactions.* For the purposes of this section, a change in ownership of an institution that results in a change of control may include, but is not limited to—

(1) The sale of the institution;

(2) The transfer of the controlling interest of stock of the institution or its parent corporation;

(3) The merger of two or more eligible institutions;

(4) The division of one institution into two or more institutions;

(5) The transfer of the liabilities of an institution to its parent corporation;

(6) A transfer of assets that comprise a substantial portion of the educational business of the institution, except where the transfer consists exclusively in the granting of a security interest in those assets; or

(7) A change in status as a for-profit, nonprofit, or public institution.

(e) *Excluded transactions.* A change in ownership and control reported under § 600.21 and otherwise subject to this section does not include a transfer of ownership and control of all or part of an owner's equity or partnership interest in an institution, the institution's parent corporation, or other legal entity that has signed the institution's Program Participation Agreement—

(1) From an owner to a ''family member'' of that owner as defined in § 600.21(f); or

(2) Upon the retirement or death of the owner, to a person with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer and who has established and retained the ownership interest for at least two years prior to the transfer.

(Approved by the Office of Management and Budget under control number 1845–0012)

(Authority: 20 U.S.C. 1099c)

[59 FR 22336, Apr. 29, 1994, as amended at 59 FR 47801, Sept. 19, 1994; 60 FR 33430, June 30, 1995; 64 FR 58616, Oct. 29, 1999; 65 FR 65673, Nov. 1, 2000; 67 FR 67070, Nov. 1, 2002]

§ 600.32 Eligibility of additional locations.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, to qualify as an eligible location, an additional location of an eligible institution must satisfy the applicable requirements of this section and §§ 600.4, 600.5, 600.6, 600.8, and 600.10.

(b) To qualify as an eligible location, an additional location is not required to satisfy the two-year requirement of §§ 600.5(a)(7) or 600.6(a)(6), 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—

(i) Owes a liability for a violation of an HEA program requirement; and

(ii) Is not making payments in accordance with an agreement to repay that liability.

(c) Notwithstanding paragraph (b) of this section, an additional location is not required to satisfy the two-year requirement of § 600.5(a)(7) or § 600.6(a)(6) if the applicant institution agrees—

(1) To be liable for all improperly expended or unspent title IV, HEA 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, HEA 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.

(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 and the Secretary has taken an action to limit, suspend, or terminate the institution's participation under § 600.41 or subpart G of this part, or has taken an emergency action 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 in existence 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 paragraph (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.

(e) For purposes of this section, an ''additional location'' is a location of an institution that was not designated as an eligible location in the eligibility notification provided to an institution under § 600.21.

(Authority: 20 U.S.C. 1088, 1099c, 1141)

[59 FR 22336, Apr. 29, 1994, as amended at 74 FR 55933, Oct. 29, 2009]

Subpart D—Loss of Eligibility

SOURCE: 59 FR 22336, Apr. 29, 1994, unless otherwise noted.

§ 600.40 Loss of eligibility.

(a)(1) Except as provided in paragraphs (a) (2) and (3) of this section, an institution, or a location or educational program of an institution, loses its eligibility on the date that—

(i) The institution, location, or educational program fails to meet any of the eligibility requirements of this part;

(ii) The institution or location permanently closes;

(iii) The institution or location ceases to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution, particular location, or the students of the institution or location; or

(iv) For purposes of the title IV, HEA programs—

(A) The institution's period of participation as specified under 34 CFR 668.13 expires; or

(B) The institution's provisional certification is revoked under 34 CFR 668.13.

(2) If an institution loses its eligibility because it violated the requirements of § 600.5(a)(8), as evidenced by the determination under provisions contained in § 600.5(d), it loses its eligibility on the last day of the fiscal year used in § 600.5(d), except that if an institution's latest fiscal year was described in § 600.7(h)(1), it loses its eligibility as of June 30, 1994.

(3) If an institution loses its eligibility under the provisions of § 600.7(a)(1), it loses its eligibility on the last day of the award year being evaluated under that provision.

(b) If the Secretary undertakes to terminate the eligibility of an institution because it violated the provisions of § 600.5(a)(8) or § 600.7(a), and the institution requests a hearing, the presiding official must terminate the institution's eligibility if it violated those provisions, notwithstanding its status at the time of the hearing.

(c)(1) If the Secretary designates an institution or any of its educational programs or locations as eligible on the basis of inaccurate information or documentation, the Secretary's designation is void from the date the Secretary made the designation, and the institution or program or location, as applicable, never qualified as eligible.

(2) If an institution closes its main campus or stops providing any educational programs on its main campus, it loses its eligibility as an institution, and that loss of eligibility includes all its locations and all its programs. Its loss of eligibility is effective on the date it closes that campus or stops providing any educational program at that campus.

(d) Except as otherwise provided in this part, if an institution ceases to satisfy any of the requirements for eligibility under this part—

(1) It must notify the Secretary within 30 days of the date that it ceases to satisfy that requirement; and

(2) It becomes ineligible to continue to participate in any HEA program as of the date it ceases to satisfy any of the requirements.

(Authority: 20 U.S.C. 1088, 1099a–3, and 1141)

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40622, July 29, 1998]

§ 600.41 Termination and emergency action proceedings.

(a) If the Secretary believes that a previously designated eligible institution as a whole, or at one or more of its locations, does not satisfy the statutory or regulatory requirements that define that institution as an eligible institution, the Secretary may—

(1) Terminate the institution's eligibility designation in whole or as to a particular location—

(i) Under the procedural provisions applicable to terminations contained in 34 CFR 668.81, 668.83, 668.86, 668.87, 668.88, 668.89, 668.90 (a)(1), (a)(4), and (c) through (f), and 668.91; or

(ii) Under a show-cause hearing, if the institution's loss of eligibility results from—

(A) Its previously qualifying as an eligible vocational school;

(B) Its previously qualifying as an eligible institution, notwithstanding its unaccredited status, under the transfer-of-credit alternative to accreditation (as that alternative existed in 20 U.S.C. 1085, 1088, and 1141(a)(5)(B) and § 600.8 until July 23, 1992);

(C) Its loss of accreditation or preaccreditation;

(D) Its loss of legal authority to provide postsecondary education in the State in which it is physically located;

(E) Its violations of the provisions contained in § 600.5(a)(8) or § 600.7(a);

(F) Its permanently closing; or

(G) Its ceasing to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution, a particular location, or the students of the institution or location;

(2) Limit, under the provisions of 34 CFR 668.86, the authority of the institution to disburse, deliver, or cause the disbursement or delivery of funds under one or more title IV, HEA programs as otherwise provided under 34 CFR 668.26 for the benefit of students enrolled at the ineligible institution or location prior to the loss of eligibility of that institution or location; and

(3) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution's participation in one or more title IV, HEA programs.

(b) If the Secretary believes that an educational program offered by an institution that was previously designated by the Secretary as an eligible institution under the HEA does not satisfy relevant statutory or regulatory requirements that define that educational program as part of an eligible institution, the Secretary may in accordance with the procedural provisions described in paragraph (a) of this section—

(1) Undertake to terminate that educational program's eligibility under one or more of the title IV, HEA programs under the procedural provisions applicable to terminations described in paragraph (a) of this section;

(2) Limit the institution's authority to deliver, disburse, or cause the delivery or disbursement of funds provided under that title IV, HEA program to students enrolled in that educational program, as otherwise provided in 34 CFR 668.26; and

(3) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution's participation in one or more title IV, HEA programs with respect to students enrolled in that educational program.

(c)(1) An action to terminate and limit the eligibility of an institution as a whole or as to any of its locations or educational programs is initiated in accordance with 34 CFR 668.86(b) and becomes final 20 days after the Secretary notifies the institution of the proposed action, unless the designated department official receives by that date a request for a hearing or written material that demonstrates that the termination and limitation should not take place.

(2) Once a termination under this section becomes final, the termination is effective with respect to any commitment, delivery, or disbursement of funds provided under an applicable title IV, HEA program by the institution—

(i) Made to students enrolled in the ineligible institution, location, or educational program; and

(ii) Made on or after the date of the act or omission that caused the loss of eligibility as to the institution, location, or educational program.

(3) Once a limitation under this section becomes final, the limitation is effective with regard to any commitment, delivery, or disbursement of funds under the applicable title IV, HEA program by the institution—

(i) Made after the date on which the limitation became final; and

(ii) Made to students enrolled in the ineligible institution, location, or educational program.

(d) After a termination under this section of the eligibility of an institution as a whole or as to a location or educational program becomes final, the institution may not certify applications for, make awards of or commitments for, deliver, or disburse funds under the applicable title IV, HEA program, except—

(1) In accordance with the requirements of 34 CFR 668.26(c) with respect to students enrolled in the ineligible institution, location, or educational program; and

(2) After satisfaction of any additional requirements, imposed pursuant to a limitation under paragraph (a)(2) of this section, which may include the following:

(i) Completion of the actions required by 34 CFR 668.26(a) and (b).

(ii) Demonstration that the institution has made satisfactory arrangements for the completion of actions required by 34 CFR 668.26(a) and (b).

(iii) Securing the confirmation of a third party selected by the Secretary that the proposed disbursements or delivery of title IV, HEA program funds meet the requirements of the applicable program.

(iv) Using institutional funds to make disbursements permitted under this paragraph and seeking reimbursement from the Secretary for those disbursements.

(e) If the Secretary undertakes to terminate the eligibility of an institution, location, or program under paragraphs (a) and (b) of this section:

(1) If the basis for the loss of eligibility is the loss of accreditation or preaccreditation, the sole issue is whether the institution, location, or program has the requisite accreditation or preaccreditation. The presiding official has no authority to consider challenges to the action of the accrediting agency.

(2) If the basis for the loss of eligibility is the loss of legal authorization, the sole issue is whether the institution, location, or program has the requisite legal authorization. The presiding official has no authority to consider challenges to the action of a State agency in removing the legal authorization.

(3) If the basis for the loss of eligibility of a foreign graduate medical school is one or more annual pass rates on the U.S. Medical Licensing Examination below the threshold required in § 600.55(f)(1)(ii), the sole issue is whether one or more of the foreign medical school's pass rate or rates for the preceding calendar year fell below that threshold. For a foreign graduate medical school that opted to have the Educational Commission for Foreign Medical Graduates (ECFMG) calculate and provide the pass rates directly to the Secretary for the preceding calendar year as permitted under § 600.55(d)(2) in lieu of the foreign graduate medical school providing pass rate data to the Secretary under § 600.55(d)(1)(iii), the ECFMG's calculations of the school's rates are conclusive; and the presiding official has no authority to consider challenges to the computation of the rate or rates by the ECFMG.

(Authority: 20 U.S.C. 1088, 1091, 1094, 1099a–3, and 1141)

[59 FR 22336, Apr. 29, 1994, as amended at 63 FR 40623, July 29, 1998; 75 FR 67193, Nov. 1, 2010]

Subpart E—Eligibility of Foreign Institutions To Apply To Participate in the Federal Family Education Loan (FFEL) Programs

SOURCE: 59 FR 22063, Apr. 28, 1994, unless otherwise noted.

§ 600.51 Purpose and scope.

(a) A foreign institution is eligible to apply to participate in the Federal Family Education Loan (FFEL) programs if it is comparable to an eligible institution of higher education located in the United States and has been approved by the Secretary in accordance with the provisions of this subpart.

(b) This subpart E contains the procedures and criteria under which a foreign institution may be deemed eligible to apply to participate in the FFEL programs.

(c) Applicability of other title IV, HEA program regulations.

(1) A foreign institution must comply with all requirements for eligible and participating institutions except when made inapplicable by the HEA or when the Secretary, through publication in the FEDERAL REGISTER, identifies specific provisions as inapplicable to foreign institutions.

(2)(i) A public or nonprofit foreign institution that meets the requirements of this subpart, and that also meets the requirements of this part except as provided in §§ 600.51(c)(1) and 600.54(a), is considered an ''institution of higher education'' for purposes of the title IV, HEA program regulations; and

(ii) A for-profit foreign institution that meets the requirements of this subpart, and that also meets the requirements of this Part, except as provided in §§ 600.51(c)(1) and 600.54(a), is considered a ''proprietary institution'' for purposes of title IV, HEA program regulations.

(d)(1) A program offered by a foreign school through any use of a telecommunications course, correspondence course, or direct assessment program is not an eligible program;

(2) *Correspondence course* has the meaning given in § 600.2;

(3) *Direct assessment program* has the meaning given in § 668.10(a)(1) of this chapter;

(4) *Telecommunications course* is a course offered through any one or a combination of the technologies listed in the definition of telecommunications course in § 600.2, except that telecommunications technologies may be used to supplement and support instruction that is offered in a classroom located in the foreign country where the students and instructor are physically present.

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

[59 FR 22063, Apr. 28, 1994, as amended at 71 FR 45692, Aug. 9, 2006; 75 FR 67193, Nov. 1, 2010]

§ 600.52 Definitions.

The following definitions apply to this subpart E:

Associate degree school of nursing: A school that provides primarily or exclusively a two-year program of postsecondary education in professional nursing leading to a degree equivalent to an associate degree in the United States.

Clinical training: The portion of a graduate medical education program that counts as a clinical clerkship for purposes of medical licensure comprising core, required clinical rotation, and not required clinical rotation.

Collegiate school of nursing: A school that provides primarily or exclusively a minimum of a two-year program of postsecondary education in professional nursing leading to a degree equivalent to a bachelor of arts, bachelor of science, or bachelor of nursing in the United States, or to a degree equivalent to a graduate degree in nursing in the United States, and including advanced training related to the program of education provided by the school.

Diploma school of nursing: A school affiliated with a hospital or university, or an independent school, which provides primarily or exclusively a two-year program of postsecondary education in professional nursing leading to the equivalent of a diploma in the United States or to equivalent indicia that the program has been satisfactorily completed.

Foreign graduate medical school: A foreign institution (or, for a foreign institution that is a university, a component of that foreign institution) having as its sole mission providing an educational program that leads to a degree of medical doctor, doctor of osteopathic medicine, or the equivalent. A reference in these regulations to a foreign graduate medical school as ''free-standing'' pertains solely to those schools that qualify by themselves as foreign institutions and not to schools that are components of universities that qualify as foreign institutions.

Foreign institution:

(1) For the purposes of students who receive title IV aid, an institution that—

(i) Is not located in a State;

(ii) Except as provided with respect to clinical training offered under § 600.55(h)(1), § 600.56(b), or § 600.57(a)(2)—

(A) Has no U.S. location;

(B) Has no written arrangements, within the meaning of § 668.5, with institutions or organizations located in the United States for students enrolling at the foreign institution to take courses from institutions located in the United States;

(C) Does not permit students to enroll in any course offered by the foreign institution in the United States, including research, work, internship, externship, or special studies within the United States, except that independent research done by an individual student in the United States for not more than one academic year is permitted, if it is conducted during the dissertation phase of a doctoral program under the guidance of faculty, and the research can only be performed in a facility in the United States;

(iii) Is legally authorized by the education ministry, council, or equivalent agency of the country in which the institution is located to provide an educational program beyond the secondary education level; and

(iv) Awards degrees, certificates, or other recognized educational credentials in accordance with § 600.54(e) that are officially recognized by the country in which the institution is located; or

(2) If the educational enterprise enrolls students both within a State and

outside a State, and the number of students who would be eligible to receive title IV, HEA program funds attending locations outside a State is at least twice the number of students enrolled within a State, the locations outside a State must apply to participate as one or more foreign institutions and must meet all requirements of paragraph (1) of this definition, and the other requirements of this part. For the purposes of this paragraph, an educational enterprise consists of two or more locations offering all or part of an educational program that are directly or indirectly under common ownership.

Foreign nursing school: A foreign institution (or, for a foreign institution that is a university, a component of that foreign institution) that is an associate degree school of nursing, a collegiate school of nursing, or a diploma school of nursing. A reference in these regulations to a foreign nursing school as ''freestanding'' pertains solely to those schools that qualify by themselves as foreign institutions and not to schools that are components of universities that qualify as foreign institutions.

Foreign veterinary school: A foreign institution (or, for a foreign institution that is a university, a component of that foreign institution) having as its sole mission providing an educational program that leads to the degree of doctor of veterinary medicine, or the equivalent. A reference in these regulations to a foreign veterinary school as ''freestanding'' pertains solely to those schools that qualify by themselves as foreign institutions and not to schools that are components of universities that qualify as foreign institutions.

National Committee on Foreign Medical Education and Accreditation (NCFMEA): The operational committee of medical experts established by the Secretary to determine whether the medical school accrediting standards used in other countries are comparable to those applied to medical schools in the United States, for purposes of evaluating the eligibility of accredited foreign graduate medical schools to participate in the title IV, HEA programs.

Passing score: The minimum passing score as defined by the Educational Commission for Foreign Medical Graduates (ECFMG), or on the National Council Licensure Examination for Registered Nurses (NCLEX–RN), as applicable.

Post-baccalaureate/equivalent medical program: A program offered by a foreign graduate medical school that requires, as a condition of admission, that its students have already completed their non-medical undergraduate studies and that consists solely of courses and training leading to employment as a doctor of medicine or doctor of osteopathic medicine.

Secondary school: A school that provides secondary education as determined under the laws of the country in which the school is located.

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

[59 FR 22063, Apr. 28, 1994, as amended at 75 FR 67193, Nov. 1, 2010]

§ 600.53 Requesting an eligibility determination.

(a) To be designated as eligible to apply to participate in the FFEL programs or to continue to be eligible beyond the scheduled expiration of the institution's current period of eligibility, a foreign institution must—

(1) Apply on the form prescribed by the Secretary; and

(2) Provide all the information and documentation requested by the Secretary to make a determination of that eligibility.

(b) If a foreign institution fails to provide, release, or authorize release to the Secretary of information that is required in this subpart E, the institution is ineligible to apply to participate in the FFEL programs.

(Approved by the Office of Management and Budget under control number 1840–0673)

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

§ 600.54 Criteria for determining whether a foreign institution is eligible to apply to participate in the Direct Loan Program.

The Secretary considers a foreign institution to be comparable to an eligible institution of higher education in the United States and eligible to apply to participate in the Direct Loan Program if the foreign institution meets the following requirements:

(a)(1) Except for a freestanding foreign graduate medical school, foreign veterinary school, or foreign nursing school, the foreign institution is a public or private nonprofit educational institution.

(2) For a public or private nonprofit foreign institution, the institution meets the requirements of § 600.4, except § 600.4(a)(1), (a)(2), (a)(3), (a)(4)(ii), (a)(5), (b), (c), and any requirements the HEA or the Secretary has designated as inapplicable in accordance with § 600.51(c)(1).

(3) For a for-profit foreign medical, veterinary, or nursing school, the school meets the requirements of § 600.5, except § 600.5(a)(2), (a)(3), (a)(4), (a)(5)(i)(B), (a)(5)(ii), (a)(6), (c), (d), (e) and any requirements the HEA or the Secretary has designated as inapplicable in accordance with § 600.51(c)(1).

(b) The foreign institution admits as regular students only persons who—

(1) Have a secondary school completion credential; or

(2) Have the recognized equivalent of a secondary school completion credential.

(c) Notwithstanding § 668.5, an eligible foreign institution may not enter into a written arrangement under which an ineligible institution or organization provides any portion of one or more of the eligible foreign institution's programs. For the purposes of this paragraph, written arrangements do not include affiliation agreements for the provision of clinical training for foreign medical, veterinary, and nursing schools.

(d) An additional location of a foreign institution must separately meet the definition of a foreign institution in § 600.52 if the additional location is—

(1) Located outside of the country in which the main campus is located, except as provided in § 600.55(h)(1), § 600.56(b), § 600.57(a)(2), § 600.55(h)(3), and the definition of foreign institution found in § 600.52; or

(2) Located within the same country as the main campus, but is not covered by the legal authorization of the main campus.

(e) The foreign institution provides an eligible education program—

(1) For which the institution is legally authorized to award a degree that is equivalent to an associate, baccalaureate, graduate, or professional degree awarded in the United States;

(2) That is at least a two-academic-year program acceptable for full credit toward the equivalent of a baccalaureate degree awarded in the United States; or

(3)(i) That is equivalent to at least a one-academic-year training program in the United States that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation within the meaning of the gainful employment provisions.

(ii) An institution must demonstrate to the satisfaction of the Secretary that the amount of academic work required by a program in paragraph (e)(3)(i) of this section is equivalent to at least the definition of an academic year in § 668.3.

(f) For a for-profit foreign medical, veterinary, or nursing school—

(1) No portion of an eligible medical or veterinary program offered may be at what would be an undergraduate level in the United States; and

(2) The title IV, HEA program eligibility does not extend to any joint degree program.

(g) Proof that a foreign institution meets the requirements of paragraph (1)(iii) of the definition of a foreign institution in § 600.52 may be provided to the Secretary by a legal authorization from the appropriate education ministry, council, or equivalent agency—

(1) For all eligible foreign institutions in the country;

(2) For all eligible foreign institutions in a jurisdiction within the country; or

(3) For each separate eligible foreign institution in the country.

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

[75 FR 67194, Nov. 1, 2010]

§ 600.55 Additional criteria for determining whether a foreign graduate medical school is eligible to apply to participate in the Direct Loan Program.

(a) *General.* (1) The Secretary considers a foreign graduate medical school to be eligible to apply to participate in the title IV, HEA programs

if, in addition to satisfying the criteria of this part (except the criterion in § 600.54 that the institution be public or private nonprofit), the school satisfies the criteria of this section.

(2) A foreign graduate medical school must provide, and in the normal course require its students to complete, a program of clinical training and classroom medical instruction of not less than 32 months in length, that is supervised closely by members of the school's faculty and that—

(i) Is provided in facilities adequately equipped and staffed to afford students comprehensive clinical training and classroom medical instruction;

(ii) Is approved by all medical licensing boards and evaluating bodies whose views are considered relevant by the Secretary; and

(iii) As part of its clinical training, does not offer more than two electives consisting of no more than eight weeks per student at a site located in a foreign country other than the country in which the main campus is located or in the United States, unless that location is included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA).

(3) A foreign graduate medical school must appoint for the program described in paragraph (a)(2) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at medical schools in the United States.

(4) A foreign graduate medical school must have graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(b) *Accreditation.* A foreign graduate medical school must—

(1) Be approved by an accrediting body—

(i) That is legally authorized to evaluate the quality of graduate medical school educational programs and facilities in the country where the school is located; and

(ii) Whose standards of accreditation of graduate medical schools have been evaluated by the NCFMEA or its successor committee of medical experts and have been determined to be comparable to standards of accreditation applied to medical schools in the United States; or

(2) Be a public or private nonprofit educational institution that satisfies the requirements in § 600.4(a)(5)(i).

(c) *Admission criteria.* (1) A foreign graduate medical school having a post-baccalaureate/equivalent medical program must require students accepted for admission who are U.S. citizens, nationals, or permanent residents to have taken the Medical College Admission Test (MCAT) and to have reported their scores to the foreign graduate medical school; and

(2) A foreign graduate medical school must determine the consent requirements for, and require the necessary consents of, all students accepted for admission for whom the school must report to enable the school to comply with the collection and submission requirements of paragraph (d) of this section.

(d) *Collection and submission of data.* (1) A foreign graduate medical school must obtain, at its own expense, and submit, by the date required by paragraph (d)(3) of this section—

(i) To its accrediting authority and, on request, to the Secretary, the scores on the MCAT or successor examination, of all students admitted during the preceding calendar year who are U.S. citizens, nationals, or eligible permanent residents, together with a statement of the number of times each student took the examination;

(ii) To its accrediting authority and, on request, to the Secretary, the percentage of students graduating during the preceding calendar year (including at least all graduates who are U.S. citizens, nationals, or eligible permanent residents) who obtain placement in an accredited U.S. medical residency program;

(iii) To the Secretary, except as provided for in paragraph (d)(2) of this section, all scores, disaggregated by step/test—i.e., Step 1, Step 2—Clinical Skills (Step 2–CS), and Step 2—Clinical Knowledge (Step 2–CK), or the successor examinations—and attempt, earned during the preceding calendar year by each student and graduate, on

Step 1, Step 2–CS, and Step 2–CK, or the successor examinations, of the U.S. Medical Licensing Examination (USMLE), together with the dates the student has taken each test, including any failed tests;

(iv) To the Secretary, a statement of its citizenship rate for the preceding calendar year for a school that is subject to paragraph (f)(1)(i)(A) of this section, together with a description of the methodology used in deriving the rate that is acceptable to the Secretary.

(2) In lieu of submitting the information required in paragraph (d)(1)(iii) of this section to the Secretary, a foreign graduate medical school that is not subject to paragraph (f)(4) of this section may agree to allow the Educational Commission for Foreign Medical Graduates (ECFMG) or other responsible third party to calculate the rate described in paragraph (f)(1)(ii) and (f)(3) of this section for the preceding calendar year and provide the rate directly to the Secretary on the school's behalf with a copy to the foreign graduate medical school, provided—

(i) The foreign graduate medical school has provided by April 30 to the Secretary written consent acceptable to the Secretary to reliance by the Secretary on the pass rate as calculated by the ECFMG or other responsible third party for purposes of determining compliance with paragraph (f)(1)(ii) and (f)(3) of this section for the preceding calendar year; and

(ii) The foreign graduate medical school agrees in its written consent that for the preceding calendar year the rate as calculated by the ECFMG or other designated third party will be conclusive for purposes of determining compliance with paragraph (f)(1)(ii) and (f)(3) of this section.

(3) A foreign graduate medical school must submit the data it collects in accordance with paragraph (d)(1) of this section no later than April 30 of each year, unless the Secretary specifies a different date through a notice in the FEDERAL REGISTER.

(e) *Requirements for clinical training.* (1)(i) A foreign graduate medical school must have—

(A) A formal affiliation agreement with any hospital or clinic at which all or a portion of the school's core clinical training or required clinical rotations are provided; and

(B) Either a formal affiliation agreement or other written arrangements with any hospital or clinic at which all or a portion of its clinical rotations that are not required are provided, except for those locations that are not used regularly, but instead are chosen by individual students who take no more than two electives at the location for no more than a total of eight weeks.

(ii) The agreements described in paragraph (e)(1)(i) of this section must state how the following will be addressed at each site—

(A) Maintenance of the school's standards;

(B) Appointment of faculty to the medical school staff;

(C) Design of the curriculum;

(D) Supervision of students;

(E) Evaluation of student performance; and

(F) Provision of liability insurance.

(2) A foreign graduate medical school must notify its accrediting body within one year of any material changes in—

(i) The educational programs, including changes in clinical training programs; and

(ii) The overseeing bodies and in the formal affiliation agreements with hospitals and clinics described in paragraph (e)(1)(i) of this section.

(f) *Citizenship and USMLE pass rate percentages.* (1)(i)(A) During the calendar year preceding the year for which any of the school's students seeks an title IV, HEA program loan, at least 60 percent of those enrolled as full-time regular students in the school and at least 60 percent of the school's most recent graduating class must have been persons who did not meet the citizenship and residency criteria contained in section 484(a)(5) of the HEA, 20 U.S.C. 1091(a)(5); or

(B) The school must have had a clinical training program approved by a State prior to January 1, 2008, and must continue to operate a clinical training program in at least one State that approves the program; and

(ii) Except as provided in paragraph (f)(4) of this section, for a foreign graduate medical school outside of Canada,

for Step 1, Step 2–CS, and Step 2–CK, or the successor examinations, of the USMLE administered by the ECFMG, at least 75 percent of the school's students and graduates who took that step/test of the examination in the year preceding the year for which any of the school's students seeks a title IV, HEA program loan must have received a passing score on that step/test and are taking the step/test for the first time; or

(2)(i) The school must have had a clinical training program approved by a State as of January 1, 1992; and

(ii) The school must continue to operate a clinical training program in at least one State that approves the program.

(3) In performing the calculation required in paragraph (f)(1)(ii) of this section, a foreign graduate medical school shall—

(i) Include as a graduate each student who graduated from the school during the three years preceding the year for which the calculation is performed and who took that step/test for the first time in that year; and

(ii) Include students and graduates who take more than one step/test of the USMLE examination for the first time in the same year in the denominator for each of those steps/tests;

(4)(i) If the calculation described in paragraph (f)(1)(ii) of this section would result in any step/test pass rate based on fewer than eight students, a single pass rate for the school is determined instead based on the performance of the school's students and graduates on Step 1, Step 2–CS, and Step 2–CK combined;

(ii) If combining the results on all three step/tests as permitted in paragraph (f)(4)(i) of this section would result in a pass rate based on fewer than eight step/test results, the school is deemed to have no pass rate for that year and the results for the year are combined with each subsequent year until a pass rate based on at least eight step/test results is derived.

(g) *Other criteria.* (1) As part of establishing, publishing, and applying reasonable satisfactory academic progress standards, a foreign graduate medical school must include as a quantitative component a maximum timeframe in which a student must complete his or her educational program that must—

(i) Be no longer than 150 percent of the published length of the educational program measured in academic years, terms, credit hours attempted, clock hours completed, etc., as appropriate; and

(ii) Meet the requirements of § 668.16(e)(2)(ii)(B), (C) and (D).

(2) A foreign graduate medical school must document the educational remediation it provides to assist students in making satisfactory academic progress.

(3) A foreign graduate medical school must publish all the languages in which instruction is offered.

(h) *Location of a program.* (1) Except as provided in paragraph (h)(3)(ii) of this section, all portions of a graduate medical education program offered to U.S. students must be located in a country whose medical school accrediting standards are comparable to standards used in the United States, as determined by the NCFMEA, except for clinical training sites located in the United States.

(2) No portion of the graduate medical educational program offered to U.S. students, other than the clinical training portion of the program, may be located outside of the country in which the main campus of the foreign graduate medical school is located.

(3)(i) Except as provided in paragraph (h)(3)(ii) of this section, for any part of the clinical training portion of the educational program located in a foreign country other than the country in which the main campus is located or in the United States, in order for students attending the site to be eligible to borrow title IV, HEA program funds—

(A) The site must be located in an NCFMEA approved comparable foreign country;

(B) The institution's medical accrediting agency must have conducted an on-site evaluation and specifically approved the clinical training site; and

(C) Clinical instruction must be offered in conjunction with medical educational programs offered to students enrolled in accredited medical schools located in that approved foreign country.

(ii) A clinical training site located in a foreign country other than the country in which the main campus is located or in the United States is not required to meet the requirements of paragraph (h)(3)(i) of this section in order for students attending that site to be eligible to borrow title IV, HEA program funds if—

(A) The location is included in the accreditation of a medical program accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA); or

(B) No individual student takes more than two electives at the location and the combined length of the electives does not exceed eight weeks.

[75 FR 67195, Nov. 1, 2010]

§ 600.56 Additional criteria for determining whether a foreign veterinary school is eligible to apply to participate in the Direct Loan Program.

(a) The Secretary considers a foreign veterinary school to be eligible to apply to participate in the Direct Loan Program if, in addition to satisfying the criteria in this part (except the criterion in § 600.54 that the institution be public or private nonprofit), the school satisfies all of the following criteria:

(1) The school provides, and in the normal course requires its students to complete, a program of clinical and classroom veterinary instruction that is supervised closely by members of the school's faculty, and that is provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom veterinary instruction through a training program for foreign veterinary students that has been approved by all veterinary licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(2) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(3) The school employs for the program described in paragraph (a)(1) of this section only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at veterinary schools in the United States.

(4) Effective July 1, 2015, the school is accredited or provisionally accredited by an organization acceptable to the Secretary for the purpose of evaluating veterinary programs.

(b)(1) No portion of the foreign veterinary educational program offered to U.S. students, other than the clinical training portion of the program as provided for in paragraph (b)(2) of this section, may be located outside of the country in which the main campus of the foreign veterinary school is located;

(2)(i) For a veterinary school that is neither public nor private nonprofit, the school's students must complete their clinical training at an approved veterinary school located in the United States;

(ii) For a veterinary school that is public or private nonprofit, the school's students may complete their clinical training at an approved veterinary school located—

(A) In the United States;

(B) In the home country; or

(C) Outside of the United States or the home country, if—

(*1*) The location is included in the accreditation of a veterinary program accredited by the American Veterinary Medical Association (AVMA); or

(*2*) No individual student takes more than two electives at the location and the combined length of the elective does not exceed eight weeks.

(Authority: 20 U.S.C. 1002 and 1092.)

[75 FR 67197, Nov. 1, 2010]

§ 600.57 Additional criteria for determining whether a foreign nursing school is eligible to apply to participate in the Direct Loan Program.

(a) Effective July 1, 2012 for a foreign nursing school that was participating in any title IV, HEA program on August 13, 2008, and effective July 1, 2011 for all other foreign nursing schools, the Secretary considers the foreign nursing school to be eligible to apply to participate in the Direct Loan Program if, in addition to satisfying the criteria in this part (except the criterion in § 600.54 that the institution be

public or private nonprofit), the nursing school satisfies all of the following criteria:

(1) The nursing school is an associate degree school of nursing, a collegiate school of nursing, or a diploma school of nursing.

(2) The nursing school has an agreement with a hospital located in the United States or an accredited school of nursing located in the United States that requires students of the nursing school to complete the student's clinical training at the hospital or accredited school of nursing.

(3) The nursing school has an agreement with an accredited school of nursing located in the United States providing that students graduating from the nursing school located outside of the United States also receive a degree from the accredited school of nursing located in the United States.

(4) The nursing school certifies only Federal Stafford Loan program loans or Federal PLUS program loans, as those terms are defined in § 668.2, for students attending the nursing school.

(5) The nursing school reimburses the Secretary for the cost of any loan defaults for current and former students included in the calculation of the institution's cohort default rate during the previous fiscal year.

(6)(i) The nursing school determines the consent requirements for and requires the necessary consents of all students accepted for admission who are U.S. citizens, nationals, or eligible permanent residents to enable the school to comply with the collection and submission requirements of paragraph (a)(6)(ii) of this section.

(ii) The nursing school annually either—

(A) Obtains, at its own expense, all results achieved by students and graduates who are U.S. citizens, nationals, or eligible permanent residents on the National Council Licensure Examination for Registered Nurses (NCLEX–RN), together with the dates the student has taken the examination, including any failed examinations, and provides such results to the Secretary; or

(B) Obtains a report or reports from the National Council of State Boards of Nursing (NCSB), or an NCSB affiliate or NCSB contractor, reflecting the percentage of the school's students and graduates taking the NCLEX–RN in the preceding year who passed the examination, or the data from which the percentage could be derived, and provides the report to the Secretary.

(7) Not less than 75 percent of the school's students and graduates who are U.S. citizens, nationals, or eligible permanent residents who took the NCLEX–RN in the year preceding the year for which the institution is certifying a Federal Stafford Loan or a Federal Plus Loan, passed the examination.

(8) The school provides, including under the agreements described in paragraphs (a)(2) and (a)(3) of this section, and in the normal course requires its students to complete, a program of clinical and classroom nursing instruction that is supervised closely by members of the school's faculty that is provided in facilities adequately equipped and staffed to afford students comprehensive clinical and classroom nursing instruction, through a training program for foreign nursing students that has been approved by all nurse licensing boards and evaluating bodies whose views are considered relevant by the Secretary.

(9) The school has graduated classes during each of the two twelve-month periods immediately preceding the date the Secretary receives the school's request for an eligibility determination.

(10) The school employs only those faculty members whose academic credentials are the equivalent of credentials required of faculty members teaching the same or similar courses at nursing schools in the United States.

(b) For purposes of paragraph (a)(5) of this section, the cost of a loan default is the estimated future cost of collections on the defaulted loan.

(c) The Department continues to collect on the Direct Loan after a school reimburses the Secretary for the amount specified in paragraph (b) of this section until the loan is paid in full or otherwise satisfied, or the loan account is closed out.

(d) No portion of the foreign nursing program offered to U.S. students may be located outside of the country in which the main campus of the foreign

nursing school is located, except for clinical sites located in the United States.

[75 FR 67197, Nov. 1, 2010]

§ 600.58 Duration of eligibility determination.

(a) The eligibility of a foreign institution under this subpart expires six years after the date of the Secretary's determination that the institution is eligible to apply for participation, except that the Secretary may specify a shorter period of eligibility. In the case of a foreign graduate medical school, continued eligibility is dependent upon annual submission of the data and information required under § 600.55(a)(5)(i), subject to the terms described in § 600.53(b).

(b) A foreign institution that has been determined eligible loses its eligibility on the date that the institution no longer meets any of the criteria in this subpart E.

(c) Notwithstanding the provisions of 34 CFR 668.26, if a foreign institution loses its eligibility under this subpart E, an otherwise eligible student, continuously enrolled at the institution before the loss of eligibility, may receive an FFEL program loan for attendance at that institution for the academic year succeeding the academic year in which that institution lost its eligibility, if the student actually received an FFEL program loan for attendance at the institution for a period during which the institution was eligible under this subpart E.

(Authority: 20 U.S.C. 1082, 1088, 1099c)

[59 FR 22063, Apr. 28, 1994. Redesignated at 64 FR 58616, Oct. 29, 1999, as amended at 69 FR 12275, Mar. 16, 2004. Redesignated at 75 FR 67197, Nov. 1, 2010]

PART 601—INSTITUTION AND LENDER REQUIREMENTS RELATING TO EDUCATION LOANS

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AUTHORITY: 20 U.S.C. 1019–1019d, 1021, 1094(a) and (h).

SOURCE: 74 FR 55643, Oct. 28, 2009, unless otherwise noted.

Subpart A—General

§ 601.1 Scope.

This part establishes disclosure and reporting requirements for covered institutions, institution-affiliated organizations, and lenders that provide, issue, recommend, promote, endorse, or provide information relating to education loans. Education loans include loans authorized by the Higher Education Act of 1965, as amended (HEA) and private education loans.

(Authority:20 U.S.C. 1019–1019d, 1021, 1094(a)(25) and (e)).

§ 601.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Federal Family Education Loan (FFEL) Program

Secretary

Title IV, HEA program

(b) The following definitions also apply to this part:

Agent: An officer or employee of a covered institution or an institution-affiliated organization.

Covered institution: Any institution of higher education, proprietary institution of higher education, postsecondary vocational institution, or institution outside the United States, as these terms are defined in 34 CFR part 600, that receives any Federal funding or assistance.

Education loan: Except when used as part of the term ''private education loan'',

(1) Any loan made, insured, or guaranteed under the Federal Family Education Loan (FFEL) Program;

(2) Any loan made under the William D. Ford Federal Direct Loan Program; or

(3) A private education loan.

Institution-affiliated organization: (1) Any organization that—

(i) Is directly or indirectly related to a covered institution; and

(ii) Is engaged in the practice of recommending, promoting, or endorsing education loans for students attending such covered institution or the families of such students.

(2) An institution-affiliated organization—

(i) May include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution; and

(ii) Does not include any lender with respect to any education loan secured, made, or extended by such lender.

Lender: (1) An eligible lender in the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR 682.200(b);

(2) The Department in the Direct Loan program;

(3) In the case of a private educational loan, a private education lender as defined in section 140 of the Truth in Lending Act; and

(4) Any other person engaged in the business of securing, making, or extending education loans on behalf of the lender.

Officer: A director or trustee of a covered institution or institution-affiliated organization, if such individual is treated as an employee of such covered institution or institution-affiliated organization, respectively.

Preferred lender arrangement: (1) An arrangement or agreement between a lender and a covered institution or an institution-affiliated organization of such covered institution—

(i) Under which a lender provides or otherwise issues education loans to the students attending such covered institution or the families of such students; and

(ii) That relates to such covered institution or such institution-affiliated organization recommending, promoting, or endorsing the education loan products of the lender.

(2) A preferred lender arrangement does not include—

(i) Arrangements or agreements with respect to loans made under the William D. Ford Federal Direct Loan Program; or

(ii) Arrangements or agreements with respect to loans that originate through the PLUS Loan auction pilot program under section 499(b) of the HEA.

(3) For purpose of this definition, an arrangement or agreement does not exist if the private education loan provided or issued to a student attending a covered institution is made by the covered institution or by an institution-affiliated organization of the covered institution, and the private education loan is—

(i) Funded by the covered institution's or institution-affiliated organization's own funds;

(ii) Funded by donor-directed contributions;

(iii) Made under title VII or title VIII of the Public Service Health Act; or

(iv) Made under a State-funded financial aid program, if the terms and conditions of the loan include a loan forgiveness option for public service.

Private education loan: As the term is defined in 12 CFR 226.46(b)(5), a loan provided by a private educational lender that is not a title IV loan and that is issued expressly for postsecondary education expenses to a borrower, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private

educational lender. A private education loan does not include—

(1) An extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; or

(2) An extension of credit in which the educational institution is the lender if—

(i) The term of the extension of credit is 90 days or less; or

(ii) An interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

(Authority:20 U.S.C. 1019)

Subpart B—Loan Information To Be Disclosed by Covered Institutions and Institution-Affiliated Organizations

§ 601.10 Preferred lender arrangement disclosures.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement must disclose—

(1) On such covered institution's or institution-affiliated organization's Web site and in all informational materials described in paragraph (b) of this section that describe or discuss education loans—

(i) The maximum amount of Federal grant and loan aid under title IV of the HEA available to students, in an easy to understand format;

(ii) The information identified on a model disclosure form developed by the Secretary pursuant to section 153(a)(2)(B) of the HEA, for each type of education loan that is offered pursuant to a preferred lender arrangement of the institution or institution-affiliated organization to students of the institution or the families of such students; and

(iii) A statement that such institution is required to process the documents required to obtain a loan under the Federal Family Education Loan (FFEL) Program from any eligible lender the student selects; and

(2) On such covered institution's or institution-affiliated organization's Web site and in all informational materials described in paragraph (b) of this section that describe or discuss private education loans—

(i) In the case of a covered institution, the information that the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(11) of the Truth in Lending Act (15 U.S.C. 1638(e)(11)), for each type of private education loan offered pursuant to a preferred lender arrangement of the institution to students of the institution or the families of such students; and

(ii) In the case of an institution-affiliated organization of a covered institution, the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)), for each type of private education loan offered pursuant to a preferred lender arrangement of the organization to students of such institution or the families of such students.

(b) The informational materials described in paragraphs (a)(1) and (a)(2) of this section are publications, mailings, or electronic messages or materials that—

(1) Are distributed to prospective or current students of a covered institution and families of such students; and

(2) Describe or discuss the financial aid opportunities available to students at an institution of higher education.

(c)(1) Each covered institution and each institution-affiliated organization that participates in a preferred lender arrangement must provide the information described in paragraph (a)(1)(ii) of this section, and the information described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, respectively, for each type of education loan offered pursuant to the preferred lender arrangement.

(2) The information identified in paragraph (c)(1) of this section must be provided to students attending the covered institution, or the families of such students, as applicable, annually and must be provided in a manner that allows for the students or their families to take such information into account

before selecting a lender or applying for an education loan.

(d) If a covered institution compiles, maintains, and makes available a preferred lender list as required under § 668.14(b)(28), the institution must—

(1) Clearly and fully disclose on such preferred lender list—

(i) Not less than the information required to be disclosed under section 153(a)(2)(A) of the HEA;

(ii) Why the institution participates in a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) That the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(2) Ensure, through the use of the list of lender affiliates provided by the Secretary under section 487(h)(2) of the HEA, that—

(i) There are not less than three FFEL lenders that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) The preferred lender list under paragraph (d) of this section—

(A) Specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(B) If a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(3) Prominently disclose the method and criteria used by the institution in selecting lenders with which to participate in preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including—

(i) Payment of origination or other fees on behalf of the borrower;

(ii) Highly competitive interest rates, or other terms and conditions or provisions of Title IV, HEA program loans or private education loans;

(iii) High-quality servicing for such loans; or

(iv) Additional benefits beyond the standard terms and conditions or provisions for such loans;

(4) Exercise a duty of care and a duty of loyalty to compile the preferred lender list under paragraph (d) of this section without prejudice and for the sole benefit of the students attending the institution, or the families of such students; and

(5) Not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under title IV of the HEA for those borrowers who choose a lender that is not included on the preferred lender list.

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

(Authority:20 U.S.C. 1019a(a)(1)(A) and 1019b(c))

§ 601.11 Private education loan disclosures and self-certification form.

(a) A covered institution, or an institution-affiliated organization of such covered institution, that provides information regarding a private education loan from a lender to a prospective borrower must provide private education loan disclosures to the prospective borrower, regardless of whether the covered institution or institution-affiliated organization participates in a preferred lender arrangement.

(b) The private education loan disclosures must—

(1) Provide the prospective borrower with the information the Board of Governors of the Federal Reserve System requires to be disclosed under section 128(e)(1) of the Truth in Lending Act (15 U.S.C. 1638(e)(1)) for such loan;

(2) Inform the prospective borrower that—

(i) The prospective borrower may qualify for loans or other assistance under title IV of the HEA; and

(ii) The terms and conditions of Title IV, HEA program loans may be more favorable than the provisions of private education loans.

(c) The covered institution or institution-affiliated organization must ensure that information regarding private education loans is presented in such a manner as to be distinct from

information regarding Title IV, HEA program loans.

(d) Upon an enrolled or admitted student applicant's request for a private education loan self-certification form, an institution must provide to the applicant, in written or electronic form—

(1) The self-certification form for private education loans developed by the Secretary in consultation with the Board of Governors of the Federal Reserve System, to satisfy the requirements of section 128(e)(3) of the Truth in Lending Act (15 U.S.C. 1638(e)(3)); and

(2) The information required to complete the form, to the extent the institution possesses such information as specified in 34 CFR 668.14(b)(29).

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

(Authority:20 U.S.C. 1019a(a)(1)(B) and 1019d)

§ 601.12 Use of institution and lender name.

A covered institution, or an institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement with a lender regarding private education loans must—

(a) Not agree to the lender's use of the name, emblem, mascot, or logo of such institution or organization, or other words, pictures, or symbols readily identified with such institution or organization, in the marketing of private education loans to students attending such institution in any way that implies that the loan is offered or made by such institution or organization instead of the lender; and

(b) Ensure that the name of the lender is displayed in all information and documentation related to the private education loans described in this section.

(Authority:20 U.S.C. 1019a(a)(2)–(a)(3))

Subpart C—Responsibilities of Covered Institutions and Institution-Affiliated Organizations

§ 601.20 Annual report.

Each covered institution, and each institution-affiliated organization of such covered institution, that participates in a preferred lender arrangement, must—

(a) Prepare and submit to the Secretary an annual report, by a date determined by the Secretary, that includes, for each lender that participates in a preferred lender arrangement with such covered institution or organization—

(1) The information described in § 601.10(c); and

(2) A detailed explanation of why such covered institution or institution-affiliated organization participates in a preferred lender arrangement with the lender, including why the terms, conditions, and provisions of each type of education loan provided pursuant to the preferred lender arrangement are beneficial for students attending such institution, or the families of such students, as applicable; and

(b) Ensure that the report required under this section is made available to the public and provided to students attending or planning to attend such covered institution and the families of such students.

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

(Authority:20 U.S.C. 1019b(c)(2))

§ 601.21 Code of conduct.

(a)(1) A covered institution that participates in a preferred lender arrangement must comply with the code of conduct requirements described in this section.

(2) The covered institution must—

(i) Develop a code of conduct with respect to FFEL Program loans and private education loans with which the institution's agents must comply. The code of conduct must—

(A) Prohibit a conflict of interest with the responsibilities of an agent of an institution with respect to FFEL Program loans and private education loans; and

(B) At a minimum, include the provisions specified in paragraph (c) of this section;

(ii) Publish such code of conduct prominently on the institution's Web site; and

(iii) Administer and enforce such code by, at a minimum, requiring that all of the institution's agents with responsibilities with respect to FFEL

Program loans or private education loans be annually informed of the provisions of the code of conduct.

(b) Any institution-affiliated organization of a covered institution that participates in a preferred lender arrangement must—

(1) Comply with the code of conduct developed and published by such covered institution under paragraph (a)(1) of this section;

(2) If such institution-affiliated organization has a Web site, publish such code of conduct prominently on the Web site; and

(3) Administer and enforce such code of conduct by, at a minimum, requiring that all of such institution-affiliated organization's agents with responsibilities with respect to FFEL Program loans or private education loans be annually informed of the provisions of such code of conduct.

(c) A covered institution's code of conduct must prohibit—

(1) *Revenue-sharing arrangements with any lender*.The institution must not enter into any revenue-sharing arrangement with any lender. For purposes of this paragraph, the term *revenue-sharing arrangement* means an arrangement between a covered institution and a lender under which—

(i) A lender provides or issues a FFEL Program loan or private education loan to students attending the institution or to the families of such students; and

(ii) The institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an agent;

(2)(i) *Employees of the financial aid office receiving gifts from a lender, a guarantor, or a loan servicer*. Agents who are employed in the financial aid office of the institution or who otherwise have responsibilities with respect to FFEL Program loans or private education loans, must not solicit or accept any gift from a lender, guarantor, or servicer of FFEL Program loans or private education loans;

(ii) For purposes of paragraph (c) of this section, the term *gift* means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred;

(iii) The term *gift* does not include any of the following:

(A) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(B) Food, refreshments, training, or informational material furnished to an agent as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of FFEL Program loans or private education loans to the institution, if such training contributes to the professional development of the agent.

(C) Favorable terms, conditions, and borrower benefits on a FFEL Program loan or private education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(D) Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by §§682.604(f) and 682.604(g), as long as the institution's staff are in control of the counseling (whether in person or via electronic capabilities) and such counseling does not promote the products or services of any specific lender.

(E) Philanthropic contributions to an institution from a lender, servicer, or guarantor of FFEL Program loans or private education loans that are unrelated to FFEL Program loans or private education loans or any contribution from any lender, servicer, or guarantor, that is not made in exchange for any advantage related to FFEL Program loans or private education loans.

(F) State education grants, scholarships, or financial aid funds administered by or on behalf of a State; and

(iv) For purposes of paragraph (c) of this section, a gift to a family member of an agent, or to any other individual based on that individual's relationship with the agent, is considered a gift to the agent if—

(A) The gift is given with the knowledge and acquiescence of the agent; and

(B) The agent has reason to believe the gift was given because of the official position of the agent;

(3) *Consulting or other contracting arrangements.* An agent who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to FFEL Program loans or private education loans must not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to FFEL Program loans or private education loans. Nothing in paragraph (c)(3) of this section will be construed as prohibiting—

(i) An agent who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to FFEL Program loans or private education loans from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) An agent who is not employed in the institution's financial aid office but who has responsibility with respect to FFEL Program loans or private education loans from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of FFEL Program loans or private education loans, if the institution has a written conflict of interest policy that clearly sets forth that agents must recuse themselves from participating in any decision of the board regarding FFEL Program loans or private education loans at the institution; or

(iii) An officer, employee, or contractor of a lender, guarantor, or servicer of FFEL Program loans or private education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding FFEL Program loans or private education loans at the institution;

(4) *Directing borrowers to particular lenders or delaying loan certifications.* The institution must not—

(i) For any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(ii) Refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency;

(5)(i) *Offers of funds for private loans.* The institution must not request or accept from any lender any offer of funds to be used for private education loans, including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

(A) A specified number of FFEL Program loans or private education loans;

(B) A specified loan volume of such loans; or

(C) A preferred lender arrangement for such loans.

(ii) For purposes of paragraph (c) of this section, the term *opportunity pool loan* means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family;

(6) Staffing assistance. The institution must not request or accept from any lender any assistance with call center staffing or financial aid office staffing, except that nothing in this paragraph will be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

(i) Professional development training for financial aid administrators;

(ii) Providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or

(iii) Staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related

functions during emergencies, including State-declared or Federally declared natural disasters, Federally declared national disasters, and other localized disasters and emergencies identified by the Secretary; and

(7) *Advisory board compensation.* Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to FFEL Program loans or private education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, must not receive anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses, as that term is defined in § 668.16(d)(2)(ii), incurred in serving on such advisory board, commission, or group.

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

(Authority:20 U.S.C. 1019b(c)(2)), 1094(a)(25) and (e)

Subpart D—Loan Information To Be Disclosed by Institutions Participating in the William D. Ford Direct Loan Program

§ 601.30 Duties of institutions.

(a) Each covered institution participating in the William D. Ford Direct Loan Program under part D of title IV of the HEA must—

(1) Make the information identified in a model disclosure form developed by the Secretary pursuant to section 154(a) of the HEA available to students attending or planning to attend the institution, or the families of such students, as applicable; and

(2) If the institution provides information regarding a private education loan to a prospective borrower, concurrently provide such borrower with the information identified on the model disclosure form that the Secretary provides to the institution under section 154(a) of the HEA.

(b) In providing the information required under paragraph (a) of this section, a covered institution may use a comparable form designed by the institution instead of the model disclosure form.

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

(Authority:20 U.S.C. 1019c(b))

Subpart E—Lender Responsibilities

§ 601.40 Disclosure and reporting requirements for lenders.

(a) *Disclosures to borrowers.* (1) A lender must, at or prior to disbursement of a FFEL loan, provide the borrower, in writing (including through electronic means), in clear and understandable terms, the disclosures required in § 682.205(a) and (b).

(2) A lender must, for each of its private education loans, comply with the disclosure requirements under section 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e)).

(b) *Reports to the Secretary.* Each FFEL lender must report annually to the Secretary—

(1) Any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has other responsibilities with respect to education loans or other student financial aid of the institution for service on a lender advisory board, commission or group established by a lender or group of lenders; or

(2) Any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in recommending, promoting, or endorsing education loans.

(3) The report required by this paragraph must include—

(i) The amount of expenses paid or provided for each specific instance in which the lender provided expenses;

(ii) The name of any agent described in paragraph (b)(1) of this section to whom the expenses were paid or provided;

(iii) The dates of the activity for which the expenses were paid or provided; and

(iv) A brief description of the activity for which the expenses were paid or provided.

(c) *Lender certification of compliance.* (1) Any FFEL lender participating in one or more preferred lender arrangements must annually certify to the

Secretary its compliance with the Higher Education Act of 1965, as amended; and

(2) If the lender is required to submit an audit under 34 CFR 682.305(c), the lender's compliance with the requirements under this section must be reported on and attested to annually by the lender's auditor.

(3) A lender may comply with the certification requirements of this section if the certifications are provided as part of the annual audit required by 34 CFR 682.305(c).

(4) A lender who is not required to submit an audit must submit the required certification at such time and in such manner as directed by the Secretary.

(d) *Annual lender report to covered institutions.* A FFEL lender with a preferred lender arrangement with a covered institution or an institution-affiliated organization relating to FFEL loans must annually, on a date prescribed by the Secretary, provide to the covered institution or the institution-affiliated organization and to the Secretary, such information required by the Secretary in relation to the FFEL loans the lender plans to offer pursuant to that preferred lender arrangement for the next award year.

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

(Authority:20 U.S.C. 1019a(b) and 1019b(b))

PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

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AUTHORITY: 20 U.S.C. 1099b, unless otherwise noted.

SOURCE: 64 FR 56617, Oct. 20, 1999, unless otherwise noted.

Subpart A—General

§ 602.1 Why does the Secretary recognize accrediting agencies?

(a) The Secretary recognizes accrediting agencies to ensure that these agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.

(b) The Secretary lists an agency as a nationally recognized accrediting agency if the agency meets the criteria for recognition listed in subpart B of this part.

(Authority: 20 U.S.C. 1099b)

§ 602.2 How do I know which agencies the Secretary recognizes?

(a) Periodically, the Secretary publishes a list of recognized agencies in the FEDERAL REGISTER, together with each agency's scope of recognition. You may obtain a copy of the list from the Department at any time. The list is also available on the Department's web site.

(b) If the Secretary denies continued recognition to a previously recognized agency, or if the Secretary limits, suspends, or terminates the agency's recognition before the end of its recognition period, the Secretary publishes a notice of that action in the FEDERAL REGISTER. The Secretary also makes the reasons for the action available to the public, on request.

(Authority: 20 U.S.C. 1099b)

§ 602.3 What definitions apply to this part?

The following definitions apply to this part:

Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's standards and requirements.

Accrediting agency or *agency* means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer review and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

Act means the Higher Education Act of 1965, as amended.

Adverse accrediting action or *adverse action* means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.

Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.

Branch campus means a location of an institution that meets the definition of branch campus in 34 CFR 600.2.

Compliance report means a written report that the Department requires an agency to file to demonstrate that the agency has addressed deficiencies specified in a decision letter from the senior Department official or the Secretary.

Correspondence education means:

(1) Education provided through one or more courses by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor.

(2) Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student.

(3) Correspondence courses are typically self-paced.

(4) Correspondence education is not distance education.

Designated Federal Official means the Federal officer designated under section 10(f) of the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1.

Direct assessment program means an instructional program that, in lieu of

credit hours or clock hours as a measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others, and meets the conditions of 34 CFR 668.10. For title IV, HEA purposes, the institution must obtain approval for the direct assessment program from the Secretary under 34 CFR 668.10(g) or (h) as applicable. As part of that approval, the accrediting agency must—

(1) Evaluate the program(s) and include them in the institution's grant of accreditation or preaccreditation; and

(2) Review and approve the institution's claim of each direct assessment program's equivalence in terms of credit or clock hours.

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) of this definition to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include—

(1) The internet;

(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(3) Audio conferencing; or

(4) Video cassettes, DVDs, and CD–ROMs, if the cassettes, DVDs, or CD–ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3) of this definition.

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is not appealable within the agency.

Institution of higher education or *institution* means an educational institution that qualifies, or may qualify, as an eligible institution under 34 CFR part 600.

Institutional accrediting agency means an agency that accredits institutions of higher education.

Nationally recognized accrediting agency, *nationally recognized agency*, or *recognized agency* means an accrediting agency that the Secretary recognizes under this part.

Preaccreditation means the status of public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing towards accreditation and is likely to attain accreditation before the expiration of that limited period of time.

Program means a postsecondary educational program offered by an institution of higher education that leads to an academic or professional degree, certificate, or other recognized educational credential.

Programmatic accrediting agency means an agency that accredits specific educational programs that prepare students for entry into a profession, occupation, or vocation.

Recognition means an unappealed determination by the senior Department official under § 602.36, or a determination by the Secretary on appeal under § 602.37, that an accrediting agency complies with the criteria for recognition listed in subpart B of this part and that the agency is effective in its application of those criteria. A grant of recognition to an agency as a reliable authority regarding the quality of education or training offered by institutions or programs it accredits remains in effect for the term granted except upon a determination made in accordance with subpart C of this part that the agency no longer complies with the subpart B criteria or that it has become ineffective in its application of those criteria.

Representative of the public means a person who is not—

(1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;

(2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or

(3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

Scope of recognition or *scope* means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency's recognition for Title IV, HEA purposes. The Secretary's designation of scope defines the recognition granted according to—

(1) Geographic area of accrediting activities;

(2) Types of degrees and certificates covered;

(3) Types of institutions and programs covered;

(4) Types of preaccreditation status covered, if any; and

(5) Coverage of accrediting activities related to distance education or correspondence education.

Secretary means the Secretary of the U.S. Department of Education or any official or employee of the Department acting for the Secretary under a delegation of authority.

Senior Department official means the senior official in the U.S. Department of Education who reports directly to the Secretary regarding accrediting agency recognition.

State means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

Teach-out agreement means a written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides one hundred percent of at least one program offered, ceases to operate before all enrolled students have completed their program of study.

Teach-out plan means a written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides one hundred 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. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55426, Oct. 27, 2009]

Subpart B—The Criteria for Recognition

BASIC ELIGIBILITY REQUIREMENTS

§ 602.10 Link to Federal programs.

The agency must demonstrate that—

(a) If the agency accredits institutions of higher education, its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in HEA programs; or

(b) If the agency accredits institutions of higher education or higher education programs, or both, its accreditation is a required element in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs.

(Authority: 20 U.S.C. 1099b)

§ 602.11 Geographic scope of accrediting activities.

The agency must demonstrate that its accrediting activities cover—

(a) A State, if the agency is part of a State government;

(b) A region of the United States that includes at least three States that are reasonably close to one another; or

(c) The United States.

(Authority: 20 U.S.C. 1099b)

§ 602.12 Accrediting experience.

(a) An agency seeking initial recognition must demonstrate that it has—

(1) Granted accreditation or preaccreditation—

(i) To one or more institutions if it is requesting recognition as an institutional accrediting agency and to one or more programs if it is requesting recognition as a programmatic accrediting agency;

(ii) That covers the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition; and

(iii) In the geographic area for which it seeks recognition; and

(2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition.

(b) A recognized agency seeking an expansion of its scope of recognition must demonstrate that it has granted accreditation or preaccreditation covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope.

(Authority: 20 U.S.C. 1099b)

§ 602.13 Acceptance of the agency by others.

The agency must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted in the United States by—

(a) Educators and educational institutions; and

(b) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.

(Authority: 20 U.S.C. 1099b)

ORGANIZATIONAL AND ADMINISTRATIVE REQUIREMENTS

§ 602.14 Purpose and organization.

(a) The Secretary recognizes only the following four categories of agencies:

The Secretary recognizes . . .	that . . .
(1) An accrediting agency	(i) Has a voluntary membership of institutions of higher education; (ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in HEA programs; and (iii) Satisfies the ''separate and independent'' requirements in paragraph (b) of this section.
(2) An accrediting agency	(i) Has a voluntary membership; and (ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those entities to participate in non-HEA Federal programs.
(3) An accrediting agency	for purposes of determining eligibility for Title IV, HEA programs— (i) Either has a voluntary membership of individuals participating in a profession or has as its principal purpose the accrediting of programs within institutions that are accredited by a nationally recognized accrediting agency; and (ii) Either satisfies the ''separate and independent'' requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraphs (d) and (e) of this section.
(4) A State agency	(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and (ii) The Secretary listed as a nationally recognized accrediting agency on or before October 1, 1991 and has recognized continuously since that date.

(b) For purposes of this section, the term *separate and independent* means that—

*(1) The members of the agency's decision-making body—who decide the accreditation or preaccreditation status of institutions or programs, establish the agency's accreditation policies, or both—are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, and at least one-seventh of that body consists of representatives of the public;

(3) The agency has established and implemented guide lines for each member of the decision-making body to avoid conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an agency and a related, associated, or affiliated trade association or membership organization does not violate the ''separate and independent'' requirements in paragraph (b) of this section if—

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

(d) For purposes of paragraph (a)(3) of this section, the Secretary may waive the ''separate and independent'' requirements in paragraph (b) of this section if the agency demonstrates that—

(1) The Secretary listed the agency as a nationally recognized agency on or before October 1, 1991 and has recognized it continuously since that date;

(2) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying either the accrediting or policy decisions of the agency;

(3) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions independently; and

(4) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(e) An agency seeking a waiver of the ''separate and independent'' requirements under paragraph (d) of this section must apply for the waiver each time the agency seeks recognition or continued recognition.

(Authority: 20 U.S.C. 1099b)

§ 602.15 Administrative and fiscal responsibilities.

The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition. The agency meets this requirement if the agency demonstrates that—

(a) The agency has—

(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;

(2) Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency's standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance education and correspondence education;

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

(4) Educators and practitioners on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession;

(5) Representatives of the public on all decision-making bodies; and

(6) Clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency's—

(i) Board members;

(ii) Commissioners;

(iii) Evaluation team members;

(iv) Consultants;

(v) Administrative staff; and

(vi) Other agency representatives; and

(b) The agency maintains complete and accurate records of—

(1) Its last full accreditation or preaccreditation review of each institution or program, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and

(2) All decisions made throughout an institution's or program's affiliation

with the agency regarding the accreditation and preaccreditation of any institution or program and substantive changes, including all correspondence that is significantly related to those decisions.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55426, Oct. 27, 2009]

REQUIRED STANDARDS AND THEIR APPLICATION

§ 602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if—

(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

(i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

(v) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(vi) Student support services.

(vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(viii) Measures of program length and the objectives of the degrees or credentials offered.

(ix) Record of student complaints received by, or available to, the agency.

(x) Record of compliance with the institution's program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and

(2) The agency's preaccreditation standards, if offered, are appropriately related to the agency's accreditation standards and do not permit the institution or program to hold preaccreditation status for more than five years.

(b) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.

(c) If the agency has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education or correspondence education, the agency's standards must effectively address the quality of an institution's distance education or correspondence education in the areas identified in paragraph (a)(1) of this section. The agency is not required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education.

(d) If none of the institutions an agency accredits participates in any Title IV, HEA program, or if the agency only accredits programs within institutions that are accredited by a nationally recognized institutional accrediting agency, the agency is not required to have the accreditation standards described in paragraphs (a)(1)(viii) and (a)(1)(x) of this section.

(e) An agency that has established and applies the standards in paragraph (a) of this section may establish any additional accreditation standards it deems appropriate.

(f) Nothing in paragraph (a) of this section restricts—

(1) An accrediting agency from setting, with the involvement of its members, and applying accreditation standards for or to institutions or programs that seek review by the agency; or

(2) An institution from developing and using institutional standards to

show its success with respect to student achievement, which achievement may be considered as part of any accreditation review.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

§ 602.17 Application of standards in reaching an accrediting decision.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it—

(a) Evaluates whether an institution or program—

(1) Maintains clearly specified educational objectives that are consistent with its mission and appropriate in light of the degrees or certificates awarded;

(2) Is successful in achieving its stated objectives; and

(3) Maintains degree and certificate requirements that at least conform to commonly accepted standards;

(b) Requires the institution or program to prepare, following guidance provided by the agency, an in-depth self-study that includes the assessment of educational quality and the institution's or program's continuing efforts to improve educational quality;

(c) Conducts at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency's standards;

(d) Allows the institution or program the opportunity to respond in writing to the report of the on-site review;

(e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution's or program's response to the report, and any other appropriate information from other sources to determine whether the institution or program complies with the agency's standards;

(f) Provides the institution or program with a detailed written report that assesses—

(1) The institution's or program's compliance with the agency's standards, including areas needing improvement; and

(2) The institution's or program's performance with respect to student achievement; and

(g) Requires institutions that offer distance education or correspondence education to have processes in place through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the course or program and receives the academic credit. The agency meets this requirement if it—

(1) Requires institutions to verify the identity of a student who participates in class or coursework by using, at the option of the institution, methods such as—

(i) A secure login and pass code;

(ii) Proctored examinations; and

(iii) New or other technologies and practices that are effective in verifying student identity; and

(2) Makes clear in writing that institutions must use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

§ 602.18 Ensuring consistency in decision-making.

The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education or correspondence education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency—

(a) Has written specification of the requirements for accreditation and

preaccreditation that include clear standards for an institution or program to be accredited;

(b) Has effective controls against the inconsistent application of the agency's standards;

(c) Bases decisions regarding accreditation and preaccreditation on the agency's published standards;

(d) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate; and

(e) Provides the institution or program with a detailed written report that clearly identifies any deficiencies in the institution's or program's compliance with the agency's standards.

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) The agency must reevaluate, at regularly established intervals, the institutions or programs it has accredited or preaccredited.

(b) The agency must demonstrate it has, and effectively applies, a set of monitoring and evaluation approaches that enables the agency to identify problems with an institution's or program's continued compliance with agency standards and that takes into account institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of § 602.16(f). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

(c) Each agency must monitor overall growth of the institutions or programs it accredits and, at least annually, collect headcount enrollment data from those institutions or programs.

(d) Institutional accrediting agencies must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.

(e) Any agency that has notified the Secretary of a change in its scope in accordance with § 602.27(a)(5) must monitor the headcount enrollment of each institution it has accredited that offers distance education or correspondence education. If any such institution has experienced an increase in headcount enrollment of 50 percent or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such data.

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

§ 602.20 Enforcement of standards.

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—

(1) Immediately initiate adverse action against the institution or program; or

(2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed—

(i) Twelve months, if the program, or the longest program offered by the institution, is less than one year in length;

(ii) Eighteen months, if the program, or the longest program offered by the institution, is at least one year, but less than two years, in length; or

(iii) Two years, if the program, or the longest program offered by the institution, is at least two years in length.

(b) If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance.

(Authority: 20 U.S.C. 1099b)

§ 602.21 Review of standards.

(a) The agency must maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits

and relevant to the educational or training needs of students.

(b) The agency determines the specific procedures it follows in evaluating its standards, but the agency must ensure that its program of review—

(1) Is comprehensive;

(2) Occurs at regular, yet reasonable, intervals or on an ongoing basis;

(3) Examines each of the agency's standards and the standards as a whole; and

(4) Involves all of the agency's relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review.

(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time. Before finalizing any changes to its standards, the agency must—

(1) Provide notice to all of the agency's relevant constituencies, and other parties who have made their interest known to the agency, of the changes the agency proposes to make;

(2) Give the constituencies and other interested parties adequate opportunity to comment on the proposed changes; and

(3) Take into account any comments on the proposed changes submitted timely by the relevant constituencies and by other interested parties.

(Authority: 20 U.S.C. 1099b)

REQUIRED OPERATING POLICIES AND PROCEDURES

§ 602.22 Substantive change.

(a) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if—

(1) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and

(2) The agency's definition of substantive change includes at least the following types of change:

(i) Any change in the established mission or objectives of the institution.

(ii) Any change in the legal status, form of control, or ownership of the institution.

(iii) The addition of courses or programs that represent a significant departure from the existing offerings of educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution.

(iv) The addition of programs of study at a degree or credential level different from that which is included in the institution's current accreditation or preaccreditation.

(v) A change from clock hours to credit hours.

(vi) A substantial increase in the number of clock or credit hours awarded for successful completion of a program.

(vii) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the entering into a contract under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one or more of the accredited institution's educational programs.

(viii)(A) If the agency's accreditation of an institution enables it to seek eligibility to participate in title IV, HEA programs, the establishment of an additional location at which the institution offers at least 50 percent of an educational program. The addition of such a location must be approved by the agency in accordance with paragraph (c) of this section unless the accrediting agency determines, and issues a written determination stating that the institution has—

(*1*) Successfully completed at least one cycle of accreditation of maximum length offered by the agency and one renewal, or has been accredited for at least ten years;

(*2*) At least three additional locations that the agency has approved; and

(*3*) Met criteria established by the agency indicating sufficient capacity to add additional locations without individual prior approvals, including at a minimum satisfactory evidence of a system to ensure quality across a distributed enterprise that includes—

(*i*) Clearly identified academic control;

(*ii*) Regular evaluation of the locations;

(*iii*) Adequate faculty, facilities, resources, and academic and student support systems;

(*iv*) Financial stability; and

(*v*) Long-range planning for expansion.

(B) The agency's procedures for approval of an additional location, pursuant to paragraph (a)(2)(viii)(A) of this section, must require timely reporting to the agency of every additional location established under this approval.

(C) Each agency determination or redetermination to preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section may not exceed five years.

(D) The agency may not preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section after the institution undergoes a change in ownership resulting in a change in control as defined in 34 CFR 600.31 until the institution demonstrates that it meets the conditions for the agency to preapprove additional locations described in this paragraph.

(E) The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under paragraph (a)(2)(viii)(A) of this section.

(ix) The acquisition of any other institution or any program or location of another institution.

(x) The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.

(3) The agency's substantive change policy must define when the changes made or proposed by an institution are or would be sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution.

(b) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify an effective date, which is not retroactive, on which the change is included in the program's or institution's accreditation. An agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. Except as provided in paragraph (c) of this section, these procedures may, but need not, require a visit by the agency.

(c) Except as provided in paragraph (a)(2)(viii)(A) of this section, if the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the agency's procedures for the approval of an additional location where at least 50 percent of an educational program is offered must provide for a determination of the institution's fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include—

(1) A visit, within six months, to each additional location the institution establishes, if the institution—

(i) Has a total of three or fewer additional locations;

(ii) Has not demonstrated, to the agency's satisfaction, that it has a proven record of effective educational oversight of additional locations; or

(iii) Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;

(2) An effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and

(3) An effective mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and

preaccredited institutions that experience rapid growth in the number of additional locations maintain educational quality.

(d) The purpose of the visits described in paragraph (c) of this section is to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application to the agency for approval of the additional location.

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55428, Oct. 27, 2009]

§ 602.23 Operating procedures all agencies must have.

(a) The agency must maintain and make available to the public written materials describing—

(1) Each type of accreditation and preaccreditation it grants;

(2) The procedures that institutions or programs must follow in applying for accreditation or preaccreditation;

(3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The institutions and programs that the agency currently accredits or preaccredits and, for each institution and program, the year the agency will next review or reconsider it for accreditation or preaccreditation; and

(5) The names, academic and professional qualifications, and relevant employment and organizational affiliations of—

(i) The members of the agency's policy and decision-making bodies; and

(ii) The agency's principal administrative staff.

(b) In providing public notice that an institution or program subject to its jurisdiction is being considered for accreditation or preaccreditation, the agency must provide an opportunity for third-party comment concerning the institution's or program's qualifications for accreditation or preaccreditation. At the agency's discretion, third-party comment may be received either in writing or at a public hearing, or both.

(c) The accrediting agency must—

(1) Review in a timely, fair, and equitable manner any complaint it receives against an accredited institution or program that is related to the agency's standards or procedures. The agency may not complete its review and make a decision regarding a complaint unless, in accordance with published procedures, it ensures that the institution or program has sufficient opportunity to provide a response to the complaint;

(2) Take follow-up action, as necessary, including enforcement action, if necessary, based on the results of its review; and

(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.

(d) If an institution or program elects to make a public disclosure of its accreditation or preaccreditation status, the agency must ensure that the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name, address, and telephone number of the agency.

(e) The accrediting agency must provide for the public correction of incorrect or misleading information an accredited or preaccredited institution or program releases about—

(1) The accreditation or preaccreditation status of the institution or program;

(2) The contents of reports of on-site reviews; and

(3) The agency's accrediting or preaccrediting actions with respect to the institution or program.

(f) The agency may establish any additional operating procedures it deems appropriate. At the agency's discretion, these may include unannounced inspections.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55428, Oct. 27, 2009]

§ 602.24 Additional procedures certain institutional accreditors must have.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in Title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:

(a) *Branch campus.* (1) The agency must require the institution to notify the agency if it plans to establish a branch campus and to submit a business plan for the branch campus that describes—

(i) The educational program to be offered at the branch campus;

(ii) The projected revenues and expenditures and cash flow at the branch campus; and

(iii) The operation, management, and physical resources at the branch campus.

(2) The agency may extend accreditation to the branch campus only after it evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has sufficient educational, financial, operational, management, and physical resources to meet the agency's standards.

(3) The agency must undertake a site visit to the branch campus as soon as practicable, but no later than six months after the establishment of that campus.

(b) *Change in ownership.* The agency must undertake a site visit to an institution that has undergone a change of ownership that resulted in a change of control as soon as practicable, but no later than six months after the change of ownership.

(c) *Teach-out plans and agreements.* (1) The agency must require an institution it accredits or preaccredits to submit a teach-out plan to the agency for approval upon the occurrence of any of the following events:

(i) The Secretary notifies the agency that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required.

(ii) The agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution notifies the agency that it intends to cease operations entirely or close a location that provides one hundred percent of at least one program.

(iv) A State licensing or authorizing agency notifies the agency that an institution's license or legal authorization to provide an educational program has been or will be revoked.

(2) The agency must evaluate the teach-out plan to ensure it provides for the equitable treatment of students under criteria established by the agency, specifies additional charges, if any, and provides for notification to the students of any additional charges.

(3) If the agency approves a teach-out plan that includes a program that is accredited by another recognized accrediting agency, it must notify that accrediting agency of its approval.

(4) The agency may require an institution it accredits or preaccredits to enter into a teach-out agreement as part of its teach-out plan.

(5) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement, either on its own or at the request of the agency, to submit that teach-out agreement for approval. The agency may approve the teach-out agreement only if the agreement is between institutions that are accredited or preaccredited by a nationally recognized accrediting agency, is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that—

(i) The teach-out institution has the necessary experience, resources, and support services to—

(A) Provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; and

(B) Remain stable, carry out its mission, and meet all obligations to existing students; and

(ii) The teach-out institution demonstrates that it can provide students access to the program and services without requiring them to move or travel substantial distances and that it will provide students with information about additional charges, if any.

(d) *Closed institution.* If an institution the agency accredits or preaccredits closes without a teach-out plan or agreement, the agency must work with the Department and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

(e) *Transfer of credit policies.* The accrediting agency must confirm, as part of its review for initial accreditation or preaccreditation, or renewal of accreditation, that the institution has transfer of credit policies that—

(1) Are publicly disclosed in accordance with § 668.43(a)(11); and

(2) Include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.

(f) *Credit-hour policies.* The accrediting agency, as part of its review of an institution for initial accreditation or preaccreditation or renewal of accreditation, must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.

(1) The accrediting agency meets this requirement if—

(i) It reviews the institution's—

(A) Policies and procedures for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for courses and programs; and

(B) The application of the institution's policies and procedures to its programs and coursework; and

(ii) Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education.

(2) In reviewing and evaluating an institution's policies and procedures for determining credit hour assignments, an accrediting agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (f)(1)(i)(B) of this section.

(3) The accrediting agency must take such actions that it deems appropriate to address any deficiencies that it identifies at an institution as part of its reviews and evaluations under paragraph (f)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.

(4) If, following the institutional review process under this paragraph (f), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55428, Oct. 27, 2009; 75 FR 66947, Oct. 29, 2010]

§ 602.25 Due process.

The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process. The agency meets this requirement if the agency does the following:

(a) Provides adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.

(b) Uses procedures that afford an institution or program a reasonable period of time to comply with the agency's requests for information and documents.

(c) Provides written specification of any deficiencies identified at the institution or program examined.

(d) Provides sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.

(e) Notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.

(f) Provides an opportunity, upon written request of an institution or

program, for the institution or program to appeal any adverse action prior to the action becoming final.

(1) The appeal must take place at a hearing before an appeals panel that—

(i) May not include current members of the agency's decision-making body that took the initial adverse action;

(ii) Is subject to a conflict of interest policy;

(iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: to affirm, amend, or reverse adverse actions of the original decision-making body; and

(iv) Affirms, amends, reverses, or remands the adverse action. A decision to affirm, amend, or reverse the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option. In a decision to remand the adverse action to the original decision-making body for further consideration, the appeals panel must identify specific issues that the original decision-making body must address. In a decision that is implemented by or remanded to the original decision-making body, that body must act in a manner consistent with the appeals panel's decisions or instructions.

(2) The agency must recognize the right of the institution or program to employ counsel to represent the institution or program during its appeal, including to make any presentation that the agency permits the institution or program to make on its own during the appeal.

(g) The agency notifies the institution or program in writing of the result of its appeal and the basis for that result.

(h)(1) The agency must provide for a process, in accordance with written procedures, through which an institution or program may, before the agency reaches a final adverse action decision, seek review of new financial information if all of the following conditions are met:

(i) The financial information was unavailable to the institution or program until after the decision subject to appeal was made.

(ii) The financial information is significant and bears materially on the financial deficiencies identified by the agency. The criteria of significance and materiality are determined by the agency.

(iii) The only remaining deficiency cited by the agency in support of a final adverse action decision is the institution's or program's failure to meet an agency standard pertaining to finances.

(2) An institution or program may seek the review of new financial information described in paragraph (h)(1) of this section only once and any determination by the agency made with respect to that review does not provide a basis for an appeal.

(Authority: 20 U.S.C. 1099b)

[74 FR 55429, Oct. 27, 2009]

§ 602.26 Notification of accrediting decisions.

The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures—

(a) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public no later than 30 days after it makes the decision:

(1) A decision to award initial accreditation or preaccreditation to an institution or program.

(2) A decision to renew an institution's or program's accreditation or preaccreditation;

(b) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision, but no later than 30 days after it reaches the decision:

(1) A final decision to place an institution or program on probation or an equivalent status.

(2) A final decision to deny, withdraw, suspend, revoke, or terminate

the accreditation or preaccreditation of an institution or program.

(3) A final decision to take any other adverse action, as defined by the agency, not listed in paragraph (b)(2) of this section;

(c) Provides written notice to the public of the decisions listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section within 24 hours of its notice to the institution or program;

(d) For any decision listed in paragraph (b)(2) of this section, makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment;

(e) Notifies the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program—

(1) Decides to withdraw voluntarily from accreditation or preaccreditation, within 30 days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or

(2) Lets its accreditation or preaccreditation lapse, within 30 days of the date on which accreditation or preaccreditation lapses.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55429, Oct. 27, 2009]

§ 602.27 Other information an agency must provide the Department.

(a) The agency must submit to the Department—

(1) A copy of any annual report it prepares;

(2) A copy, updated annually, of its directory of accredited and preaccredited institutions and programs;

(3) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(4) Any proposed change in the agency's policies, procedures, or accreditation or preaccreditation standards that might alter its—

(i) Scope of recognition, except as provided in paragraph (a)(5) of this section; or

(ii) Compliance with the criteria for recognition;

(5) Notification that the agency has expanded its scope of recognition to include distance education or correspondence education as provided in section 496(a)(4)(B)(i)(I) of the HEA. Such an expansion of scope is effective on the date the Department receives the notification;

(6) The name of any institution or program it accredits that the agency has reason to believe is failing to meet its title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency's reasons for concern about the institution or program; and

(7) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in title IV, HEA programs.

(b) If an agency has a policy regarding notification to an institution or program of contact with the Department in accordance with paragraph (a)(6) or (a)(7) of this section, it must provide for a case-by-case review of the circumstances surrounding the contact, and the need for the confidentiality of that contact. Upon a specific request by the Department, the agency must consider that contact confidential.

(Authority: 20 U.S.C. 1099b)

[74 FR 55430, Oct. 27, 2009]

§ 602.28 Regard for decisions of States and other accrediting agencies.

(a) If the agency is an institutional accrediting agency, it may not accredit or preaccredit institutions that lack

legal authorization under applicable State law to provide a program of education beyond the secondary level.

(b) Except as provided in paragraph (c) of this section, the agency may not grant initial or renewed accreditation or preaccreditation to an institution, or a program offered by an institution, if the agency knows, or has reasonable cause to know, that the institution is the subject of—

(1) A pending or final action brought by a State agency to suspend, revoke, withdraw, or terminate the institution's legal authority to provide postsecondary education in the State;

(2) A decision by a recognized agency to deny accreditation or preaccreditation;

(3) A pending or final action brought by a recognized accrediting agency to suspend, revoke, withdraw, or terminate the institution's accreditation or preaccreditation; or

(4) Probation or an equivalent status imposed by a recognized agency.

(c) The agency may grant accreditation or preaccreditation to an institution or program described in paragraph (b) of this section only if it provides to the Secretary, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does not preclude the agency's grant of accreditation or preaccreditation.

(d) If the agency learns that an institution it accredits or preaccredits, or an institution that offers a program it accredits or preaccredits, is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the agency must promptly review its accreditation or preaccreditation of the institution or program to determine if it should also take adverse action or place the institution or program on probation or show cause.

(e) The agency must, upon request, share with other appropriate recognized accrediting agencies and recognized State approval agencies information about the accreditation or preaccreditation status of an institution or program and any adverse actions it has taken against an accredited or preaccredited institution or program.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

Subpart C—The Recognition Process

SOURCE: 74 FR 55430, Oct. 27, 2009, unless otherwise noted.

APPLICATION AND REVIEW BY DEPARTMENT STAFF

§ 602.30 Activities covered by recognition procedures.

Recognition proceedings are administrative actions taken on any of the following matters:

(a) Applications for initial or continued recognition submitted under § 602.31(a).

(b) Applications for an expansion of scope submitted under § 602.31(b).

(c) Compliance reports submitted under § 602.31(c).

(d) Reviews of agencies that have expanded their scope of recognition by notice, following receipt by the Department of information of an increase in headcount enrollment described in § 602.19(e).

(e) Staff analyses identifying areas of non-compliance based on a review conducted under § 602.33.

(Authority: 20 U.S.C. 1099b)

§ 602.31 Agency submissions to the Department.

(a) *Applications for recognition or renewal of recognition.* An accrediting agency seeking initial or continued recognition must submit a written application to the Secretary. Each accrediting agency must submit an application for continued recognition at least once every five years, or within a shorter time period specified in the final recognition decision. The application must consist of—

(1) A statement of the agency's requested scope of recognition;

(2) Evidence, including documentation, that the agency complies with the criteria for recognition listed in subpart B of this part and effectively applies those criteria; and

(3) Evidence, including documentation, of how an agency that includes or seeks to include distance education or correspondence education in its scope of recognition applies its standards in evaluating programs and institutions it accredits that offer distance education or correspondence education.

(b) *Applications for expansions of scope.* An agency seeking an expansion of scope by application must submit a written application to the Secretary. The application must—

(1) Specify the scope requested;

(2) Include documentation of experience in accordance with § 602.12(b); and

(3) Provide copies of any relevant standards, policies, or procedures developed and applied by the agency and documentation of the application of these standards, policies, or procedures.

(c) *Compliance reports.* If an agency is required to submit a compliance report, it must do so within 30 days following the end of the period for achieving compliance as specified in the decision of the senior Department official or Secretary, as applicable.

(d) *Review following an increase in headcount enrollment.* If an agency that has notified the Secretary in writing of its change in scope to include distance education or correspondence education in accordance with § 602.27(a)(5) reports an increase in headcount enrollment in accordance with § 602.19(e) for an institution it accredits, or if the Department notifies the agency of such an increase at one of the agency's accredited institutions, the agency must, within 45 days of reporting the increase or receiving notice of the increase from the Department, as applicable, submit a report explaining—

(1) How the agency evaluates the capacity of the institutions or programs it accredits to accommodate significant growth in enrollment and to maintain educational quality;

(2) The specific circumstances regarding the growth at the institution(s) or programs(s) that triggered the review and the results of any evaluation conducted by the agency; and

(3) Any other information that the agency deems appropriate to demonstrate the effective application of the criteria for recognition or that the Department may require.

(e) *Consent to sharing of information.* By submitting an application for recognition, the agency authorizes Department staff throughout the application process and during any period of recognition—

(1) To observe its site visits to one or more of the institutions or programs it accredits or preaccredits, on an announced or unannounced basis;

(2) To visit locations where agency activities such as training, review and evaluation panel meetings, and decision meetings take place, on an announced or unannounced basis;

(3) To obtain copies of all documents the staff deems necessary to complete its review of the agency; and

(4) To gain access to agency records, personnel, and facilities.

(f) *Public availability of agency records obtained by the Department.* (1) The Secretary's processing and decision making on requests for public disclosure of agency materials reviewed under this part are governed by the Freedom of Information Act, 5 U.S.C. 552; the Trade Secrets Act, 18 U.S.C. 1905; the Privacy Act of 1974, as amended, 5 U.S.C 552a; the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1; and all other applicable laws. In recognition proceedings, agencies may—

(i) Redact information that would identify individuals or institutions that is not essential to the Department's review of the agency;

(ii) Make a good faith effort to designate all business information within agency submissions that the agency believes would be exempt from disclosure under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). A blanket designation of all information contained within a submission, or of a category of documents, as meeting this exemption will not be considered a good faith effort and will be disregarded;

(iii) Identify any other material the agency believes would be exempt from public disclosure under FOIA, the factual basis for the request, and any legal basis the agency has identified for withholding the document from disclosure; and

(iv) Ensure documents submitted are only those required for Department review or as requested by Department officials.

(2) The Secretary processes FOIA requests in accordance with 34 CFR part 5 and makes all documents provided to the Advisory Committee available to the public.

(Authority: 20 U.S.C. 1099b)

§ 602.32 Procedures for Department review of applications for recognition or for change in scope, compliance reports, and increases in enrollment.

(a) After receipt of an agency's application for initial or continued recognition, or change in scope, or an agency's compliance report, or an agency's report submitted under § 602.31(d), Department staff publishes a notice of the agency's application or report in the FEDERAL REGISTER inviting the public to comment on the agency's compliance with the criteria for recognition and establishing a deadline for receipt of public comment.

(b) The Department staff analyzes the agency's application for initial or renewal of recognition, compliance report, or report submitted under § 602.31(d) to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and in the agency's effectiveness in applying the criteria. The analysis of an application for recognition and, as appropriate, of a compliance report, or of a report required under § 602.31(d), includes—

(1) Observations from site visit(s), on an announced or unannounced basis, to the agency or to a location where agency activities such as training, review and evaluation panel meetings, and decision meetings take place and to one or more of the institutions or programs it accredits or preaccredits;

(2) Review of the public comments and other third-party information the Department staff receives by the established deadline, and the agency's responses to the third-party comments, as appropriate, as well as any other information Department staff assembles for purposes of evaluating the agency under this part; and

(3) Review of complaints or legal actions involving the agency.

(c) The Department staff analyzes the materials submitted in support of an application for expansion of scope to ensure that the agency has the requisite experience, policies that comply with subpart B of this part, capacity, and performance record to support the request.

(d) Department staff's evaluation of an agency may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency relative to their compliance with the agency's standards, the effectiveness of the standards, and the agency's application of those standards.

(e) If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate compliance with the basic eligibility requirements in §§ 602.10 through 602.13, the staff—

(1) Returns the agency's application and provides the agency with an explanation of the deficiencies that caused staff to take that action; and

(2) Recommends that the agency withdraw its application and reapply when the agency can demonstrate compliance.

(f) Except with respect to an application that has been returned or is withdrawn under paragraph (e) of this section, when Department staff completes its evaluation of the agency, the staff—

(1) Prepares a written draft analysis of the agency;

(2) Sends the draft analysis including any identified areas of non-compliance and a proposed recognition recommendation, and all supporting documentation, including all third-party comments the Department received by the established deadline, to the agency;

(3) Invites the agency to provide a written response to the draft analysis and proposed recognition recommendation and third-party comments, specifying a deadline that provides at least 30 days for the agency's response;

(4) Reviews the response to the draft analysis the agency submits, if any, and prepares the written final analysis.

The final analysis includes a recognition recommendation to the senior Department official, as the Department staff deems appropriate, including, but not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, require the submission of a compliance report and continue recognition pending a final decision on compliance, approve or deny a request for expansion of scope, or revise or affirm the scope of the agency; and

(5) Provides to the agency, no later than seven days before the Advisory Committee meeting, the final staff analysis and any other available information provided to the Advisory Committee under § 602.34(c).

(g) The agency may request that the Advisory Committee defer acting on an application at that Advisory Committee meeting if Department staff fails to provide the agency with the materials described, and within the timeframes provided, in paragraphs (f)(3) and (f)(5) of this section. If the Department staff's failure to send the materials in accordance with the timeframe described in paragraph (f)(3) or (f)(5) of this section is due to the failure of the agency to submit reports to the Department, other information the Secretary requested, or its response to the draft analysis, by the deadline established by the Secretary, the agency forfeits its right to request a deferral of its application.

(Authority: 20 U.S.C. 1099b)

§ 602.33 Procedures for review of agencies during the period of recognition.

(a) Department staff may review the compliance of a recognized agency with the criteria for recognition at any time—

(1) At the request of the Advisory Committee; or

(2) Based on any information that, as determined by Department staff, appears credible and raises issues relevant to recognition.

(b) The review may include, but need not be limited to, any of the activities described in § 602.32(b) and (d).

(c) If, in the course of the review, and after provision to the agency of the documentation concerning the inquiry and consultation with the agency, Department staff notes that one or more deficiencies may exist in the agency's compliance with the criteria for recognition or in the agency's effective application of those criteria, it—

(1) Prepares a written draft analysis of the agency's compliance with the criteria of concern. The draft analysis reflects the results of the review, and includes a recommendation regarding what action to take with respect to recognition. Possible recommendations include, but are not limited to, a recommendation to limit, suspend, or terminate recognition, or require the submission of a compliance report and to continue recognition pending a final decision on compliance;

(2) Sends the draft analysis including any identified areas of non-compliance, and a proposed recognition recommendation, and all supporting documentation to the agency; and

(3) Invites the agency to provide a written response to the draft analysis and proposed recognition recommendation, specifying a deadline that provides at least 30 days for the agency's response.

(d) If, after review of the agency's response to the draft analysis, Department staff concludes that the agency has demonstrated compliance with the criteria for recognition, the staff notifies the agency in writing of the results of the review. If the review was requested by the Advisory Committee, staff also provides the Advisory Committee with the results of the review.

(e) If, after review of the agency's response to the draft analysis, Department staff concludes that the agency has not demonstrated compliance, the staff—

(1) Notifies the agency that the draft analysis will be finalized for presentation to the Advisory Committee;

(2) Publishes a notice in the FEDERAL REGISTER including, if practicable, an invitation to the public to comment on the agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

(3) Provides the agency with a copy of all public comments received and, if practicable, invites a written response from the agency;

(4) Finalizes the staff analysis as necessary to reflect its review of any agency response and any public comment received; and

(5) Provides to the agency, no later than seven days before the Advisory Committee meeting, the final staff analysis and a recognition recommendation and any other information provided to the Advisory Committee under § 602.34(c).

(f) The Advisory Committee reviews the matter in accordance with § 602.34.

(Authority: 20 U.S.C. 1099b)

REVIEW BY THE NATIONAL ADVISORY COMMITTEE ON INSTITUTIONAL QUALITY AND INTEGRITY

§ 602.34 Advisory Committee meetings.

(a) Department staff submits a proposed schedule to the Chairperson of the Advisory Committee based on anticipated completion of staff analyses.

(b) The Chairperson of the Advisory Committee establishes an agenda for the next meeting and, in accordance with the Federal Advisory Committee Act, presents it to the Designated Federal Official for approval.

(c) Before the Advisory Committee meeting, Department staff provides the Advisory Committee with—

(1) The agency's application for recognition or for expansion of scope, the agency's compliance report, or the agency's report submitted under § 602.31(d), and supporting documentation;

(2) The final Department staff analysis of the agency developed in accordance with § 602.32 or § 602.33, and any supporting documentation;

(3) At the request of the agency, the agency's response to the draft analysis;

(4) Any written third-party comments the Department received about the agency on or before the established deadline;

(5) Any agency response to third-party comments; and

(6) Any other information Department staff relied upon in developing its analysis.

(d) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the FEDERAL REGISTER inviting interested parties, including those who submitted third-party comments concerning the agency's compliance with the criteria for recognition, to make oral presentations before the Advisory Committee.

(e) The Advisory Committee considers the materials provided under paragraph (c) of this section in a public meeting and invites Department staff, the agency, and other interested parties to make oral presentations during the meeting. A transcript is made of all Advisory Committee meetings.

(f) The written motion adopted by the Advisory Committee regarding each agency's recognition will be made available during the Advisory Committee meeting. The Department will provide each agency, upon request, with a copy of the motion on recognition at the meeting. Each agency that was reviewed will be sent an electronic copy of the motion relative to that agency as soon as practicable after the meeting.

(g) After each meeting of the Advisory Committee at which a review of agencies occurs, the Advisory Committee forwards to the senior Department official its recommendation with respect to each agency, which may include, but is not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, to grant or deny a request for expansion of scope, to revise or affirm the scope of the agency, or to require the agency to submit a compliance report and to continue recognition pending a final decision on compliance.

(Authority: 20 U.S.C. 1099b)

§ 602.35 Responding to the Advisory Committee's recommendation.

(a) Within ten days following the Advisory Committee meeting, the agency and Department staff may submit written comments to the senior Department official on the Advisory Committee's recommendation. The agency must simultaneously submit a copy of its written comments, if any, to Department staff. Department staff must simultaneously submit a copy of its written comments, if any, to the agency.

(b) Comments must be limited to—

(1) Any Advisory Committee recommendation that the agency or Department staff believes is not supported by the record;

(2) Any incomplete Advisory Committee recommendation based on the agency's application; and

(3) The inclusion of any recommendation or draft proposed decision for the senior Department official's consideration.

(c)(1) Neither the Department staff nor the agency may submit additional documentary evidence with its comments unless the Advisory Committee's recognition recommendation proposes finding the agency noncompliant with, or ineffective in its application of, a criterion or criteria for recognition not identified in the final Department staff analysis provided to the Advisory Committee.

(2) Within ten days of receipt by the Department staff of an agency's comments or new evidence, if applicable, or of receipt by the agency of the Department staff's comments, Department staff, the agency, or both, as applicable, may submit a response to the senior Department official. Simultaneously with submission, the agency must provide a copy of any response to the Department staff. Simultaneously with submission, Department staff must provide a copy of any response to the agency.

(Authority: 20 U.S.C. 1099b)

REVIEW AND DECISION BY THE SENIOR DEPARTMENT OFFICIAL

§ 602.36 Senior Department official's decision.

(a) The senior Department official makes a decision regarding recognition of an agency based on the record compiled under §§ 602.32, 602.33, 602.34, and 602.35 including, as applicable, the following:

(1) The materials provided to the Advisory Committee under § 602.34(c).

(2) The transcript of the Advisory Committee meeting.

(3) The recommendation of the Advisory Committee.

(4) Written comments and responses submitted under § 602.35.

(5) New evidence submitted in accordance with § 602.35(c)(1).

(6) A communication from the Secretary referring an issue to the senior Department official's consideration under § 602.37(e).

(b) In the event that statutory authority or appropriations for the Advisory Committee ends, or there are fewer duly appointed Advisory Committee members than needed to constitute a quorum, and under extraordinary circumstances when there are serious concerns about an agency's compliance with subpart B of this part that require prompt attention, the senior Department official may make a decision in a recognition proceeding based on the record compiled under § 602.32 or § 602.33 after providing the agency with an opportunity to respond to the final staff analysis. Any decision made by the senior Department official absent a recommendation from the Advisory Committee may be appealed to the Secretary as provided in § 602.37.

(c) Following consideration of an agency's recognition under this section, the senior Department official issues a recognition decision.

(d) Except with respect to decisions made under paragraph (f) or (g) of this section and matters referred to the senior Department official under § 602.37(e) or (f), the senior Department official notifies the agency in writing of the senior Department official's decision regarding the agency's recognition within 90 days of the Advisory Committee meeting or conclusion of the review under paragraph (b) of this section.

(e) The senior Department official's decision may include, but is not limited to, approving, denying, limiting, suspending, or terminating recognition, granting or denying an application for an expansion of scope, revising or affirming the scope of the agency, or continuing recognition pending submission and review of a compliance report under §§ 602.32 and 602.34 and review of the report by the senior Department official under this section.

(1)(i) The senior Department official approves recognition if the agency complies with the criteria for recognition listed in subpart B of this part and if the agency effectively applies those criteria.

(ii) If the senior Department official approves recognition, the recognition decision defines the scope of recognition and the recognition period. The recognition period does not exceed five years, including any time during which recognition was continued to permit submission and review of a compliance report.

(iii) If the scope or period of recognition is less than that requested by the agency, the senior Department official explains the reasons for approving a lesser scope or recognition period.

(2)(i) Except as provided in paragraph (e)(3) of this section, if the agency either fails to comply with the criteria for recognition listed in subpart B of this part, or to apply those criteria effectively, the senior Department official denies, limits, suspends, or terminates recognition.

(ii) If the senior Department official denies, limits, suspends, or terminates recognition, the senior Department official specifies the reasons for this decision, including all criteria the agency fails to meet and all criteria the agency has failed to apply effectively.

(3)(i) Except as provided in paragraph (e)(3)(ii) of this section, if a recognized agency fails to demonstrate compliance with or effective application of a criterion or criteria, but the senior Department official concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective application of those criteria within 12 months or less, the senior Department official may continue the agency's recognition, pending submission by the agency of a compliance report, review of the report under §§ 602.32 and 602.34, and review of the report by the senior Department official under this section. In such a case, the senior Department official specifies the criteria the compliance report must address, and a time period, not longer than 12 months, during which the agency must achieve compliance and effectively apply the criteria. The compliance report documenting compliance and effective application of criteria is due not later than 30 days after the end of the period specified in the senior Department official's decision.

(ii) If the record includes a compliance report, and the senior Department official determines that an agency has not complied with the criteria for recognition, or has not effectively applied those criteria, during the time period specified by the senior Department official in accordance with paragraph (e)(3)(i) of this section, the senior Department official denies, limits, suspends, or terminates recognition, except, in extraordinary circumstances, upon a showing of good cause for an extension of time as determined by the senior Department official and detailed in the senior Department official's decision. If the senior Department official determines good cause for an extension has been shown, the senior Department official specifies the length of the extension and what the agency must do during it to merit a renewal of recognition.

(f) If the senior Department official determines, based on the record, that a decision to deny, limit, suspend, or terminate an agency's recognition may be warranted based on a finding that the agency is noncompliant with, or ineffective in its application of, a criterion or criteria of recognition not identified earlier in the proceedings as an area of noncompliance, the senior Department official provides—

(1) The agency with an opportunity to submit a written response and documentary evidence addressing the finding; and

(2) The staff with an opportunity to present its analysis in writing.

(g) If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the senior Department official's attention while a decision regarding the agency's recognition is pending before the senior Department official, and if the senior Department official concludes the recognition decision should not be made without consideration of the information, the senior Department official either—

(1)(i) Does not make a decision regarding recognition of the agency; and

(ii) Refers the matter to Department staff for review and analysis under § 602.32 or § 602.33, as appropriate, and

consideration by the Advisory Committee under § 602.34; or

(2)(i) Provides the information to the agency and Department staff;

(ii) Permits the agency to respond to the senior Department official and the Department staff in writing, and to include additional evidence relevant to the issue, and specifies a deadline;

(iii) Provides Department staff with an opportunity to respond in writing to the agency's submission under paragraph (g)(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on the record described in paragraph (a) of this section, as supplemented by the information provided under this paragraph.

(h) No agency may submit information to the senior Department official, or ask others to submit information on its behalf, for purposes of invoking paragraph (g) of this section. Before invoking paragraph (g) of this section, the senior Department official will take into account whether the information, if submitted by a third party, could have been submitted in accordance with § 602.32(a) or § 602.33(e)(2).

(i) If the senior Department official does not reach a final decision to approve, deny, limit, suspend, or terminate an agency's recognition before the expiration of its recognition period, the senior Department official automatically extends the recognition period until a final decision is reached.

(j) Unless appealed in accordance with § 602.37, the senior Department official's decision is the final decision of the Secretary.

(Authority: 20 U.S.C. 1099b)

APPEAL RIGHTS AND PROCEDURES

§ 602.37 Appealing the senior Department official's decision to the Secretary.

(a) The agency may appeal the senior Department official's decision to the Secretary. Such appeal stays the decision of the senior Department official until final disposition of the appeal. If an agency wishes to appeal, the agency must—

(1) Notify the Secretary and the senior Department official in writing of its intent to appeal the decision of the senior Department official, no later than ten days after receipt of the decision;

(2) Submit its appeal to the Secretary in writing no later than 30 days after receipt of the decision; and

(3) Provide the senior Department official with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The senior Department official may file a written response to the appeal. To do so, the senior Department official must—

(1) Submit a response to the Secretary no later than 30 days after receipt of a copy of the appeal; and

(2) Provide the agency with a copy of the senior Department official's response at the same time it is submitted to the Secretary.

(c) Neither the agency nor the senior Department official may include in its submission any new evidence it did not submit previously in the proceeding.

(d) On appeal, the Secretary makes a recognition decision, as described in § 602.36(e). If the decision requires a compliance report, the report is due within 30 days after the end of the period specified in the Secretary's decision. The Secretary renders a final decision after taking into account the senior Department official's decision, the agency's written submissions on appeal, the senior Department official's response to the appeal, if any, and the entire record before the senior Department official. The Secretary notifies the agency in writing of the Secretary's decision regarding the agency's recognition.

(e) The Secretary may determine, based on the record, that a decision to deny, limit, suspend, or terminate an agency's recognition may be warranted based on a finding that the agency is noncompliant with, or ineffective in its application with respect to, a criterion or criteria for recognition not identified as an area of noncompliance earlier in the proceedings. In that case, the Secretary, without further consideration of the appeal, refers the matter to the senior Department official for consideration of the issue under § 602.36(f). After the senior Department official makes a decision, the agency

may, if desired, appeal that decision to the Secretary.

(f) If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the Secretary's attention while a decision regarding the agency's recognition is pending before the Secretary, and if the Secretary concludes the recognition decision should not be made without consideration of the information, the Secretary either—

(1)(i) Does not make a decision regarding recognition of the agency; and

(ii) Refers the matter to Department staff for review and analysis under § 602.32 or § 602.33, as appropriate, and review by the Advisory Committee under § 602.34; and consideration by the senior Department official under § 602.36; or

(2)(i) Provides the information to the agency and the senior Department official;

(ii) Permits the agency to respond to the Secretary and the senior Department official in writing, and to include additional evidence relevant to the issue, and specifies a deadline;

(iii) Provides the senior Department official with an opportunity to respond in writing to the agency's submission under paragraph (f)(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on all the materials described in paragraphs (d) and (f) of this section.

(g) No agency may submit information to the Secretary, or ask others to submit information on its behalf, for purposes of invoking paragraph (f) of this section. Before invoking paragraph (f) of this section, the Secretary will take into account whether the information, if submitted by a third party, could have been submitted in accordance with § 602.32(a) or § 602.33(e)(2).

(h) If the Secretary does not reach a final decision on appeal to approve, deny, limit, suspend, or terminate an agency's recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until a final decision is reached.

(Authority: 20 U.S.C. 1099b)

§ 602.38 Contesting the Secretary's final decision to deny, limit, suspend, or terminate an agency's recognition.

An agency may contest the Secretary's decision under this part in the Federal courts as a final decision in accordance with applicable Federal law. Unless otherwise directed by the court, a decision of the Secretary to deny, limit, suspend, or terminate the agency's recognition is not stayed during an appeal in the Federal courts.

(Authority: 20 U.S.C. 1099b)

Subpart D—Department Responsibilities

SOURCE: 64 FR 56617, Oct. 20, 1999. Redesignated at 74 FR 55435, Oct. 27, 2009, unless otherwise noted.

§ 602.50 What information does the Department share with a recognized agency about its accredited institutions and programs?

(a) If the Department takes an action against an institution or program accredited by the agency, it notifies the agency no later than 10 days after taking that action.

(b) If another Federal agency or a State agency notifies the Department that it has taken an action against an institution or program accredited by the agency, the Department notifies the agency as soon as possible but no later than 10 days after receiving the written notice from the other Government agency.

(Authority: 20 U.S.C. 1099b)

PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES

Subpart A [Reserved]

Subpart B—Criteria for State Agencies

Sec.
603.20 Scope.
603.21 Publication of list.
603.22 Inclusion on list.
603.23 Initial recognition, and reevaluation.
603.24 Criteria for State agencies.

AUTHORITY: 20 U.S.C. 1001, 1002, 1094(c)(4); 38 U.S.C. 3675, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Criteria for State Agencies

AUTHORITY: Sec. 438 (b) of the Higher Education Act of 1965 Pub. L. 89-329 as amended by Pub. L. 92-318, 86 Stat. 235, 264 (20 U.S.C. 1087-1(b)), unless otherwise noted.

SOURCE: 39 FR 30042, Aug. 20, 1974, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 603.20 Scope.

(a) Pursuant to section 438(b) of the Higher Education Act of 1965 as amended by Pub. L. 92–318, the Secretary is required to publish a list of State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for Federal student assistance programs administered by the Department.

(b) Approval by a State agency included on the list will provide an alternative means of satisfying statutory standards as to the quality of public postsecondary vocational education to be undertaken by students receiving assistance under such programs.

(Authority: 20 U.S.C. 1087–1(b))

§ 603.21 Publication of list.

Periodically the Secretary will publish a list in the FEDERAL REGISTER of the State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States.

(Authority: 20 U.S.C. 1087–1(b))

§ 603.22 Inclusion on list.

Any State agency which desires to be listed by the Secretary as meeting the criteria set forth in § 603.24 should apply in writing to the Director, Division of Eligibility and Agency Evaluation, Office of Postsecondary Education, Department of Education, Washington, DC 20202.

(Authority: 20 U.S.C. 1087–1(b))

[45 FR 86300, Dec. 30, 1980]

§ 603.23 Initial recognition, and reevaluation.

For initial recognition and for renewal of recognition, the State agency will furnish information establishing its compliance with the criteria set forth in § 603.24. This information may be supplemented by personal interviews or by review of the agency's facilities, records, personnel qualifications, and administrative management. Each agency listed will be reevaluated by the Secretary at his discretion, but at least once every four years. No adverse decision will become final without affording an opportunity for a hearing.

(Authority: 20 U.S.C. 1087–1(b))

§ 603.24 Criteria for State agencies.

The following are the criteria which the Secretary will utilize in designating a State agency as a reliable authority to assess the quality of public postsecondary vocational education in its respective State.

(a) *Functional aspects*. The functional aspects of the State agency must be shown by:

(1) *Its scope of operations*. The agency:

(i) Is statewide in the scope of its operations and is legally authorized to approve public postsecondary vocational institutions or programs;

(ii) Clearly sets forth the scope of its objectives and activities, both as to kinds and levels of public postsecondary vocational institutions or programs covered, and the kinds of operations performed;

(iii) Delineates the process by which it differentiates among and approves programs of varying levels.

(2) *Its organization*. The State agency:

(i) Employs qualified personnel and uses sound procedures to carry out its operations in a timely and effective manner;

(ii) Receives adequate and timely financial support, as shown by its appropriations, to carry out its operations;

(iii) Selects competent and knowledgeable persons, qualified by experience and training, and selects such persons in accordance with nondiscriminatory practices, (A) to participate on visiting teams, (B) to engage in consultative services for the evaluation

and approval process, and (C) to serve on decision-making bodies.

(3) *Its procedures*. The State agency:

(i) Maintains clear definitions of approval status and has developed written procedures for granting, reaffirming, revoking, denying, and reinstating approval status;

(ii) Requires, as an integral part of the approval and reapproval process, institutional or program self-analysis and onsite reviews by visiting teams, and provides written and consultative guidance to institutions or programs and visiting teams.

(A) Self-analysis shall be a qualitative assessment of the strengths and limitations of the instructional program, including the achievement of institutional or program objectives, and should involve a representative portion of the institution's administrative staff, teaching faculty, students, governing body, and other appropriate constituencies.

(B) The visiting team, which includes qualified examiners other than agency staff, reviews instructional content, methods and resources, administrative management, student services, and facilities. It prepares written reports and recommendations for use by the State agency.

(iii) Reevaluates at reasonable and regularly scheduled intervals institutions or programs which it has approved.

(b) *Responsibility and reliability*. The responsibility and reliability of the State agency will be demonstrated by:

(1) Its responsiveness to the public interest. The State agency:

(i) Has an advisory body which provides for representation from public employment services and employers, employees, postsecondary vocational educators, students, and the general public, including minority groups. Among its functions, this structure provides counsel to the State agency relating to the development of standards, operating procedures and policy, and interprets the educational needs and manpower projections of the State's public postsecondary vocational education system;

(ii) Demonstrates that the advisory body makes a real and meaningful contribution to the approval process;

(iii) Provides advance public notice of proposed or revised standards or regulations through its regular channels of communications, supplemented, if necessary, with direct communication to inform interested members of the affected community. In addition, it provides such persons the opportunity to comment on the standards or regulations prior to their adoption;

(iv) Secures sufficient qualitative information regarding the applicant institution or program to enable the institution or program to demonstrate that it has an ongoing program of evaluation of outputs consistent with its educational goals;

(v) Encourages experimental and innovative programs to the extent that these are conceived and implemented in a manner which ensures the quality and integrity of the institution or program;

(vi) Demonstrates that it approves only those institutions or programs which meet its published standards; that its standards, policies, and procedures are fairly applied; and that its evaluations are conducted and decisions are rendered under conditions that assure an impartial and objective judgment;

(vii) Regularly reviews its standards, policies and procedures in order that the evaluative process shall support constructive analysis, emphasize factors of critical importance, and reflect the educational and training needs of the student;

(viii) Performs no function that would be inconsistent with the formation of an independent judgment of the quality of an educational institution or program;

(ix) Has written procedures for the review of complaints pertaining to institutional or program quality as these relate to the agency's standards, and demonstrates that such procedures are adequate to provide timely treatment of such complaints in a manner fair and equitable to the complainant and to the institution or program;

(x) Annually makes available to the public (A) its policies for approval, (B) reports of its operations, and (C) list of institutions or programs which it has approved;

(xi) Requires each approved school or program to report on changes instituted to determine continued compliance with standards or regulations;

(xii) Confers regularly with counterpart agencies that have similar responsibilities in other and neighboring States about methods and techniques that may be used to meet those responsibilities.

(2) Its assurances that due process is accorded to institutions or programs seeking approval. The State agency:

(i) Provides for adequate discussion during the on-site visit between the visiting team and the faculty, administrative staff, students, and other appropriate persons;

(ii) Furnishes as a result of the evaluation visit, a written report to the institution or program commenting on areas of strength, areas needing improvement, and, when appropriate, suggesting means of improvement and including specific areas, if any, where the institution or program may not be in compliance with the agency's standards;

(iii) Provides the chief executive officer of the institution or program with opportunity to comment upon the written report and to file supplemental materials pertinent to the facts and conclusions in the written report of the visiting team before the agency takes action on the report;

(iv) Provides the chief executive officer of the institution with a specific statement of reasons for any adverse action, and notice of the right to appeal such action before an appeal body designated for that purpose;

(v) Publishes rules of procedure regarding appeals;

(vi) Continues the approval status of the institution or program pending disposition of an appeal;

(vii) Furnishes the chief executive officer of the institution or program with a written decision of the appeal body, including a statement of its reasons therefor.

(c) *Credit-hour policies.* The State agency, as part of its review of an institution for initial approval or renewal of approval, must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours.

(1) The State agency meets this requirement if—

(i) It reviews the institution's—

(A) Policies and procedures for determining the credit hours, as defined in 34 CFR 600.2, that the institution awards for courses and programs; and

(B) The application of the institution's policies and procedures to its programs and coursework; and

(ii) Makes a reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education.

(2) In reviewing and evaluating an institution's policies and procedures for determining credit hour assignments, a State agency may use sampling or other methods in the evaluation, sufficient to comply with paragraph (c)(1)(i)(B) of this section.

(3) The State agency must take such actions that it deems appropriate to address any deficiencies that it identifies at an institution as part of its reviews and evaluations under paragraph (c)(1)(i) and (ii) of this section, as it does in relation to other deficiencies it may identify, subject to the requirements of this part.

(4) If, following the institutional review process under this paragraph (c), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.

(d) *Capacity to foster ethical practices.* The State agency must demonstrate its capability and willingness to foster ethical practices by showing that it:

(i) Promotes a well-defined set of ethical standards governing institutional or programmatic practices, including recruitment, advertising, transcripts, fair and equitable student tuition refunds, and student placement services;

(ii) Maintains appropriate review in relation to the ethical practices of each approved institution or program.

(Authority: 20 U.S.C. 1094(c)(4))

[39 FR 30042, Aug. 20, 1974, as amended at 75 FR 66947, Oct. 29, 2010]

PART 604—FEDERAL-STATE RELATIONSHIP AGREEMENTS

Subpart A—General

Sec.
604.1 Federal-State relationship agreements.
604.2 Regulations that apply to Federal-State relationship agreements.
604.3 Definitions that apply to Federal-State relationship agreements.

Subpart B—Federal-State Relationship Agreements

604.10 Administrative requirements.
604.11 Planning requirements.
604.12 Changes in the agreement.
604.13 Denial of eligibility.

AUTHORITY: Sec. 1203 of the Higher Education Act of 1965, as amended by Pub. L. 96–374 (20 U.S.C. 1143), unless otherwise noted.

SOURCE: 45 FR 83221, Dec. 18, 1980, unless otherwise noted.

Subpart A—General

§ 604.1 Federal-State relationship agreements.

(a) A State shall enter into an agreement with the Secretary if it wishes to participate in the following programs authorized by the Higher Education Act of 1965, as amended: The Continuing Education Outreach program, title I-B, with the exception of sections 116 and 117 of the Act; the State Student Incentive Grant program, subpart 3 of title IV-A of the Act; and the Undergraduate Academic Facilities Grant program, title VII-A of the Act. The agreement must contain assurances relating to administration, financial management, treatment of applicants for subgrants and contracts, supplement, not supplant requirements, and planning. These assurances are listed in subpart B of this part. The means by which these assurances will be met must also be described.

(b) The provisions of the agreement replace comparable provisions in annual plans previously required by each applicable program.

(Authority: 20 U.S.C. 1143)

§ 604.2 Regulations that apply to Federal-State relationship agreements.

The following regulations apply to Federal-State relationship agreements:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 76 (State Administered Programs) and 34 CFR part 77 (Definitions).

(b) The regulations in this part 604.

(Authority: 20 U.S.C. 1232(a))

§ 604.3 Definitions that apply to Federal-State relationship agreements.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR part 77:

Applicant	Public
Application	Secretary
Contract	State
Private	Subgrant

(b) *Definitions that apply to this part.* The following definitions apply to this part:

Act means the Higher Education Act of 1965, as amended.

Applicable programs means the Continuing Education Outreach program, the State Student Incentive Grant program, and the Undergraduate Academic Facilities Grant program.

(Authority: 20 U.S.C. 1143)

Subpart B—Federal-State Relationship Agreements

§ 604.10 Administrative requirements.

The agreement shall contain the following assurances and a description of the means by which they will be met:

(a) Management practices and procedures will assure proper and efficient administration of each applicable program. The description of these methods shall include the identification of the State entity or entities designated to administer each applicable program as well as the name of the responsible official.

(b) Appropriate fiscal control and fund accounting procedures will be provided for Federal funds received under all titles of the Act.

(c) Federal funds under the applicable programs will not supplant non-Federal funds.

(d) Equitable and appropriate criteria will be used in evaluating applications for subgrants or proposals for contracts under each applicable program.

(Authority: 20 U.S.C. 1143)

§ 604.11 Planning requirements.

(a) The agreement shall contain an assurance by the State that it has a comprehensive planning or policy formulation process which:

(1) Considers the relationship between State administration of each applicable program and administration of similar State programs or processes;

(2) Encourages State policies that consider the effects of declining enrollments on all sectors of postsecondary education within the State;

(3) Considers the postsecondary educational needs of unserved and underserved individuals within the State, including individuals beyond traditional college age;

(4) Considers the resources of public and private institutions, organizations, and agencies within the State that are capable of providing postsecondary educational opportunities; and

(5) Provides for direct, equitable, and active participation in the comprehensive planning or policy formulation processes by representatives of institutions of higher education—including community colleges, proprietary institutions, and independent colleges and universities—other providers of postsecondary education services, students, and the general public in the State.

(i) Participation shall be achieved through membership on State planning commissions, State advisory councils, or other State entities established by the State to conduct federally assisted comprehensive planning or policy formulation.

(ii) Participation shall be consistent with State law.

(b) The agreement shall include a description of the planning or policy formulation process through which these assurances will be fulfilled.

(Authority: 20 U.S.C. 1143)

§ 604.12 Changes in the agreement.

(a) The agreement shall remain in effect until substantial changes in administrative practices or planning processes would require its modification.

(b) Routine organizational or personnel changes are not subject to prior modification of the agreement, but information concerning these changes shall be promptly communicated to the Secretary.

(Authority: 20 U.S.C. 1143)

§ 604.13 Denial of eligibility.

(a) If the Secretary finds that there is a failure to comply substantially with the assurances of § 604.10 then the Secretary, after giving a State reasonable notice and the opportunity for a hearing, shall notify the State that it is ineligible to participate in any applicable program.

(b) To regain eligibility, a State must satisfy the Secretary that the failure to comply has been remedied.

(Authority: 20 U.S.C. 1143)

PART 606—DEVELOPING HISPANIC-SERVING INSTITUTIONS PROGRAM

Subpart A—General

Sec.

606.1 What is the Developing Hispanic-Serving Institutions Program?
606.2 What institutions are eligible to receive a grant under the Developing Hispanic-Serving Institutions Program?
606.3 What is an enrollment of needy students?
606.4 What are low educational and general expenditures?
606.5 How does an institution apply to be designated an eligible institution?
606.6 What regulations apply?
606.7 What definitions apply?
606.8 What is a comprehensive development plan and what must it contain?
606.9 What are the type, duration, and limitations in the awarding of grants under this part?
606.10 What activities may and may not be carried out under a grant?

Subpart B—How Does an Institution Apply for a Grant?

606.11 What must be included in individual development grant applications?
606.12 What must be included in cooperative arrangement grant applications?
606.13 How many applications for a development grant may an institution submit?

Subpart C—How Does the Secretary Make an Award?

606.20 How does the Secretary choose applications for funding?
606.21 What are the selection criteria for planning grants?
606.22 What are the selection criteria for development grants?
606.23 What special funding consideration does the Secretary provide?
606.24 How does the Secretary use an applicant's performance under a previous development grant when awarding a development grant?
606.25 What priority does the Secretary use in awarding cooperative arrangement grants?

Subpart D—What Conditions Must a Grantee Meet?

606.30 What are allowable costs and what are the limitations on allowable costs?
606.31 How does a grantee maintain its eligibility?

AUTHORITY: 20 U.S.C. 1101 *et seq.*, unless otherwise noted.

SOURCE: 64 FR 70147, Dec. 15, 1999, unless otherwise noted.

Subpart A—General

§ 606.1 What is the Developing Hispanic-Serving Institutions Program?

The purpose of the Developing Hispanic-Serving Institutions Program is to provide grants to eligible institutions of higher education to—

(a) Expand educational opportunities for, and improve the academic attainment of, Hispanic students; and

(b) Expand and enhance the academic offerings, program quality, and institutional stability of colleges and universities that are educating the majority of Hispanic college students and helping large numbers of Hispanic students and other low-income individuals complete postsecondary degrees.

(Authority: 20 U.S.C. 1101)

§ 606.2 What institutions are eligible to receive a grant under the Developing Hispanic-Serving Institutions Program?

(a) An institution of higher education is eligible to receive a grant under this part if—

(1) At the time of application, it has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students;

(2) It provides assurances that not less than 50 percent of its Hispanic students are low-income individuals;

(3) It has an enrollment of needy students as described in § 606.3(a), unless the Secretary waives this requirement under § 606.3(b);

(4) It has low average educational and general expenditures per full-time equivalent undergraduate student as described in § 606.4(a), unless the Secretary waives this requirement under § 606.4(c);

(5) It is legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree; and

(6) It is accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered.

(b) A branch campus of a Hispanic-Serving institution is eligible to receive a grant under this part if—

(1) The institution as a whole meets the requirements of paragraphs (a)(3) through (a)(6) of this section; and

(2) The branch campus satisfies the requirements of paragraphs (a)(1) through (a)(4) of this section.

(c)(1) An institution that receives a grant under the Strengthening Institutions Program (34 CFR part 607) or the Strengthening Historically Black Colleges and Universities Program (34 CFR part 608) for a particular fiscal year is not eligible to receive a grant under this part for that same fiscal year, and may not relinquish its grant under those programs to secure a grant under this part.

(2) A Hispanic-Serving institution under this part may not concurrently receive grant funds under the Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Strengthening Historically Black Graduate Institutions Program.

(Authority: 20 U.S.C. 1101a and 1101d)

[64 FR 70147, Dec. 15, 1999, as amended at 66 FR 1263, Jan. 8, 2001]

§ 606.3 What is an enrollment of needy students?

(a) Except as provided in paragraph (b) of this section, for the purpose of § 606.2(a)(3), an applicant institution has an enrollment of needy students if in the base year—

(1) At least 50 percent of its degree students received student financial assistance under one or more of the following programs: Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, and Federal Perkins Loan; or

(2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offer similar instruction.

(b) The Secretary may waive the requirement contained in paragraph (a) of this section if the institution demonstrates that—

(1) The State provides more than 30 percent of the institution's budget and the institution charges not more than $99.00 for tuition and fees for an academic year;

(2) At least 30 percent of the students served by the institution in the base year were students from low-income families;

(3) The institution substantially increases the higher education opportunities for low-income students who are also educationally disadvantaged, underrepresented in postsecondary education, or minority students;

(4) The institution substantially increases the higher education opportunities for individuals who reside in an area that is not included in a ''metropolitan statistical area'' as defined by the Office of Management and Budget and who are unserved by other postsecondary institutions; or

(5) The institution will, if granted the waiver, substantially increase the higher education opportunities for Hispanic Americans.

(c) For the purpose of paragraph (b) of this section, the Secretary considers ''low-income'' to be an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the United States Bureau of the Census.

(d) Each year, the Secretary notifies prospective applicants of the low-income figures through a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1101a and 1103a)

§ 606.4 What are low educational and general expenditures?

(a)(1) Except as provided in paragraph (b) of this section, for the purpose of § 606.2(a)(2), an applicant institution's average educational and general expenditures per full-time equivalent undergraduate student in the base year must be less than the average educational and general expenditures per full-time equivalent undergraduate student in that year of comparable institutions that offer similar instruction.

(2) For the purpose of paragraph (a)(1) of this section, the Secretary determines the average educational and general expenditure per full-time equivalent undergraduate student for institutions with graduate students that do not differentiate between graduate and undergraduate educational and general expenditures by discounting the graduate enrollment using a factor of 2.5 times the number of graduate students.

(b) Each year, the Secretary notifies prospective applicants through a notice in the FEDERAL REGISTER of the average educational and general expenditures per full-time equivalent undergraduate student at comparable institutions that offer similar instruction.

(c) The Secretary may waive the requirement contained in paragraph (a) of this section, if the Secretary determines, based upon persuasive evidence provided by the institution, that—

(1) The institution's failure to satisfy the criteria in paragraph (a) of this section was due to factors which, if used in determining compliance with those criteria, distorted that determination; and

(2) The institution's designation as an eligible institution under this part is otherwise consistent with the purposes of this part.

(d) For the purpose of paragraph (c)(1) of this section, the Secretary

considers that the following factors may distort an institution's educational and general expenditures per full-time equivalent undergraduate student—

(1) Low student enrollment;

(2) Location of the institution in an unusually high cost-of-living area;

(3) High energy costs;

(4) An increase in State funding that was part of a desegregation plan for higher education; or

(5) Operation of high cost professional schools such as medical or dental schools.

(Authority: 20 U.S.C. 1101a and 1103a)

§ 606.5 How does an institution apply to be designated an eligible institution?

(a) An institution applies to the Secretary to be designated an eligible institution under this part by first submitting an application to the Secretary in the form, manner, and time established by the Secretary. The application must contain—

(1) The information necessary for the Secretary to determine whether the institution satisfies the requirements of §§ 606.2, 606.3(a), and 606.4(a);

(2) Any waiver request under §§ 606.3(b) and 606.4(c); and

(3) Information or explanations justifying any requested waiver.

(b) An institution that wishes to receive a grant under this part must submit, as part of its application for that grant, an assurance that when it submits its application—

(1) Its enrollment of undergraduate full-time equivalent students is at least 25 percent Hispanic students; and

(2) Not less than 50 percent of its Hispanic students are low-income individuals.

(Authority: 20 U.S.C. 1101a and 1103)

§ 606.6 What regulations apply?

The following regulations apply to the Developing Hispanic-Serving Institutions Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) [Reserved]

(2) 34 CFR part 75 (Direct Grant Programs), except 34 CFR 75.128(a)(2) and 75.129(a) in the case of applications for cooperative arrangements.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) [Reserved]

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 606.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1101 *et seq.*)

[64 FR 70147, Dec. 15, 1999, as amended at 79 FR 76100, Dec. 19, 2014]

§ 606.7 What definitions apply?

(a) *Definitions in EDGAR*. The terms used in this part are defined in 34 CFR 77.1:

EDGAR	Private
Fiscal year	Project period
Grant	Public
Grantee	Secretary
Grant period	State
Nonprofit	

(b) The following definitions also apply to this part:

Accredited means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

Activity means an action that is incorporated into an implementation plan designed to meet one or more objectives. An activity is a part of a project and has its own budget that is approved to carry out the objectives of that subpart.

Base year means the second fiscal year preceding the fiscal year for which an institution seeks a grant under this part.

Branch campus means a unit of a college or university that is geographically apart from the main campus of

the college or university and independent of that main campus. The Secretary considers a unit of a college or university to be independent of the main campus if the unit—

(1) Is permanent in nature;

(2) Offers courses for credit and programs leading to an associate or bachelor's degree; and

(3) Is autonomous to the extent that it has—

(i) Its own faculty and administrative or supervisory organization; and

(ii) Its own budgetary and hiring authority.

Comparable institutions that offer similar instruction means institutions that are being compared with an applicant institution and that fall within one of the following four categories—

(1) Public junior or community colleges;

(2) Private nonprofit junior or community colleges;

(3) Public institutions that offer an educational program for which they offer a bachelor's degree; or

(4) Private nonprofit institutions that offer an educational program for which they offer a bachelor's degree.

Cooperative arrangement means an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part and another eligible or ineligible institution of higher education, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Degree student means a student who enrolls at an institution for the purpose of obtaining the degree, certificate, or other recognized educational credential offered by that institution.

Developmental program and services means new or improved programs and services, beyond those regularly budgeted, specifically designed to improve the self sufficiency of the school.

Educational and general expenditures means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

Educationally disadvantaged means a college student who requires special services and assistance to enable them to succeed in higher education. The phrase includes, but is not limited to, students who come from—

(1) Economically disadvantaged families;

(2) Limited English proficiency families;

(3) Migrant worker families; or

(4) Families in which one or both of their parents have dropped out of secondary school.

Federal Pell Grant Program means the grant program authorized by title IV-A–1 of the HEA.

Federal Perkins Loan Program, formerly called the National Direct Student Loan Program, means the loan program authorized by title IV-E of the HEA.

Federal Supplemental Education Opportunity Grant Program means the grant program authorized by title IV-A-3 of the HEA.

Federal Work-Study Program means the part-time employment program authorized under title IV-C of the HEA.

Full-time equivalent students means the sum of the number of students enrolled full-time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

HEA means the Higher Education Act of 1965, as amended.

Hispanic student means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Institution of higher education means an educational institution defined in section 101 of the HEA.

Junior or community college means an institution of higher education—

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) Provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree; or

(ii) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

Minority student means a student who is an Alaska Native, American Indian, Asian-American, Black (African-American), Hispanic American, Native Hawaiian, or Pacific Islander.

Nationally recognized accrediting agency or association means an accrediting agency or association that the Secretary has recognized to accredit or preaccredit a particular category of institution in accordance with the provisions contained in 34 CFR part 603. The Secretary periodically publishes a list of those nationally recognized accrediting agencies and associations in the FEDERAL REGISTER.

Operational programs and services means the regular, ongoing budgeted programs and services at an institution.

Preaccredited means a status that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is progressing toward accreditation within a reasonable period of time.

Project means all the funded activities under a grant.

Self-sufficiency means the point at which an institution is able to survive without continued funding under the Developing Hispanic-Serving Institutions Program.

Underrepresented means proportionate representation as measured by degree recipients, that is less than the proportionate representation in the general population—

(1) As indicated by—

(i) The most current edition of the Department's *Digest of Educational Statistics;*

(ii) The National Research Council's *Doctorate Recipients from United States Universities;* or

(iii) Other standard statistical references, as announced annually in the FEDERAL REGISTER notice inviting applications for new awards under this program; or

(2) As documented by national survey data submitted to and accepted by the Secretary on a case-by-case basis.

(Authority: 20 U.S.C. 1101 *et seq.;* OMB Directive No. 15)

§ 606.8 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan is an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Academic programs;

(2) Institutional management; and

(3) Fiscal stability.

(b) The comprehensive development plan must include the following:

(1) An analysis of the strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability.

(2) A delineation of the institution's goals for its academic programs, institutional management, and fiscal stability, based on the outcomes of the analysis described in paragraph (b)(1) of this section.

(3) Measurable objectives related to reaching each goal and timeframes for achieving the objectives.

(4) Methods and resources that will be used to institutionalize practices and improvements developed under the proposed project.

(5) Its five year plan to improve its services to Hispanic and other low-income students.

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.9 What are the type, duration, and limitations in the awarding of grants under this part?

(a)(1) Under this part, the Secretary may award planning grants and two types of development grants, individual development grants and cooperative arrangement development grants.

(2) Planning grants may be awarded for a period not to exceed one year.

(3) Either type of development grant may be awarded for a period of five years.

(b)(1) An institution that received an individual development grant of five years may not subsequently receive another individual development grant for a period of two years from the date on which the five-year grant terminates.

(2) A cooperative arrangement grant is not considered to be an individual development grant under paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1101c and 1103c)

§ 606.10 What activities may and may not be carried out under a grant?

(a) *Planning grants.* Under a planning grant, a grantee shall formulate—

(1) A comprehensive development plan described in § 606.8; and

(2) An application for a development grant.

(b) *Development grants—allowable activities.* Under a development grant, except as provided in paragraph (c) of this section, a grantee shall carry out activities that implement its comprehensive development plan and hold promise for strengthening the institution. Activities that may be carried out include, but are not limited to—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.

(2) Construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities.

(3) Support of faculty exchanges, faculty development, curriculum development, academic instruction, and faculty fellowships to assist in attaining advanced degrees in the fellow's field of instruction.

(4) Purchase of library books, periodicals, and other educational materials, including telecommunications program material.

(5) Tutoring, counseling, and student service programs designed to improve academic success.

(6) Funds management, administrative management, and acquisition of equipment for use in strengthening funds management.

(7) Joint use of facilities, such as laboratories and libraries.

(8) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector.

(9) Establishing or improving an endowment fund, provided the grantee uses no more than 20 percent of its grant funds for this purpose and at least matches those grant funds with non-Federal funds.

(10) Creating or improving facilities for Internet or other distance learning academic instruction capabilities, including purchase or rental of telecommunications technology equipment or services.

(11) Establishing or enhancing a program of teacher education designed to qualify students to teach in public elementary or secondary schools.

(12) Establishing community outreach programs that will encourage elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

(13) Expanding the number of Hispanic and other underrepresented graduate and professional students that can be served by the institution by expanding courses and institutional resources.

(14) Other activities that contribute to carrying out the purposes of this program.

(c) *Development grants—unallowable activities.* A grantee may not carry out the following activities or pay the following costs under a development grant:

(1) Activities that are not included in the grantee's approved application.

(2) Activities that are inconsistent with any State plan for higher education that is applicable to the institution, including, but not limited to, a State plan for desegregation of higher education.

(3) Activities or services that relate to sectarian instruction or religious worship.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation or to prepare them to teach theological subjects.

(5) Developing or improving non-degree or non-credit courses other than basic skills development courses.

(6) Developing or improving community-based or community services programs, unless the program provides academic-related experiences or academic credit toward a degree for degree students, or, unless it is a program or services to encourage elementary and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

(7) Purchase of standard office equipment, such as furniture, file cabinets, bookcases, typewriters, or word processors.

(8) Payment of any portion of the salary of a president, vice president, or equivalent officer who has college-wide administrative authority and responsibility at an institution to fill a position under the grant such as project coordinator or activity director.

(9) Costs of organized fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.

(10) Costs of student recruitment such as advertisements, literature, and college fairs.

(11) Services to high school students, unless they are services to encourage such students to develop the skills and the interest to pursue postsecondary education.

(12) Instruction in the institution's standard courses as indicated in the institution's catalog.

(13) Costs for health and fitness programs, transportation, and day care services.

(14) Student activities such as entertainment, cultural, or social enrichment programs, publications, social clubs, or associations.

(15) Activities that are operational in nature rather than developmental in nature.

(d) *Endowment funds.* If a grantee uses part of its grant funds to establish or increase an endowment fund, it must comply with the provisions of §§ 628.3, 628.6, 628.10, and 628.41 through 628.47 of this chapter with regard to the use of those funds, except—

(1) The definition of the term ''endowment fund income'' in § 628.6 of this chapter does not apply. For the purposes of this paragraph (d), ''endowment fund income'' means an amount equal to the total value of the fund, including fund appreciation and retained interest and dividends, minus the endowment fund corpus;

(2) Instead of the requirement in § 628.10(a) of this chapter, the grantee institution must match each dollar of Federal grant funds used to establish or increase an endowment fund with one dollar of non-Federal funds; and

(3) Instead of the requirements in § 628.41(a)(3) through (a)(5) and the introductory text in § 628.41(b) and § 628.41(b)(2) and (b)(3) of this chapter, if a grantee institution decides to use any of its grant funds for endowment purposes, it must match those grant funds immediately with non-Federal funds when it places those funds into its endowment fund.

(Authority: 20 U.S.C. 1101 *et seq.*)

[64 FR 70147, Dec. 15, 1999, as amended at 65 FR 79310, Dec. 19, 2000]

Subpart B—How Does an Institution Apply for a Grant?

§ 606.11 What must be included in individual development grant applications?

In addition to the information needed by the Secretary to determine whether the institution should be awarded a grant under the funding criteria contained in subpart C, an application for a development grant must include—

(a) The institution's comprehensive development plan;

(b) A description of the relationship of each activity for which grant funds are requested to the relevant goals and objectives of its plan;

(c) A description of any activities that were funded under previous development grants awarded under the Developing Hispanic-Serving Institutions Program that expired within five years of when the development grant will begin and the institution's justification for not completing the activities under the previous grant, if applicable;

(d) If the applicant is applying to carry out more than one activity—

(1) A description of those activities that would be a sound investment of Federal funds if funded separately;

(2) A description of those activities that would be a sound investment of Federal funds only if funded with the other activities; and

(3) A ranking of the activities in preferred funding order.

(Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.12 What must be included in cooperative arrangement grant applications?

(a)(1) Institutions applying for a cooperative arrangement grant shall submit only one application for that grant regardless of the number of institutions participating in the cooperative arrangement.

(2) The application must include the names of each participating institution, the role of each institution, and the rationale for each eligible participating institution's decision to request grant funds as part of a cooperative arrangement rather than as an individual grantee.

(b) If the application is for a development grant, the application must contain—

(1) Each participating institution's comprehensive development plan;

(2) The information required under § 606.11; and

(3) An explanation from each eligible participating institution of why participation in a cooperative arrangement grant rather than performance under an individual grant will better enable it to meet the goals and objectives of its comprehensive development plan at a lower cost.

(4) The name of the applicant for the group that is legally responsible for—

(i) The use of all grant funds; and

(ii) Ensuring that the project is carried out by the group in accordance with Federal requirements.

(Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1103 and 1103e)

§ 606.13 How many applications for a development grant may an institution submit?

In any fiscal year, an institution of higher education may—

(a) Submit an application for an individual development grant; and

(b) Be part of a cooperative arrangement application.

(Authority: 20 U.S.C. 1101 *et seq.*)

Subpart C—How Does the Secretary Make an Award?

§ 606.20 How does the Secretary choose applications for funding?

(a) The Secretary evaluates an application on the basis of the criteria in—

(1) Sections 606.21 and 606.23 for a planning grant; and

(2) Sections 606.22, 606.23, 600.24, and 606.25 for a development grant.

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(c)(1) The Secretary considers funding an application for a planning grant that meets the requirements under § 606.21.

(2) The Secretary considers funding an application for a development grant that—

(i) Is submitted with a comprehensive development plan that satisfies all the elements required of such a plan under § 606.8; and

(ii) In the case of an application for a cooperative arrangement grant, demonstrates that the grant will enable each eligible participant to meet the goals and objectives of its comprehensive development plan better and at a

lower cost than if each eligible participant were funded individually.

(Authority: 20 U.S.C. 1101 *et seq.*)

[64 FR 70147, Dec. 15, 1999, as amended at 70 FR 13373, Mar. 21, 2005]

§ 606.21 What are the selection criteria for planning grants?

The Secretary evaluates an application for a planning grant on the basis of the criteria in this section.

(a) *Design of the planning process.* The Secretary reviews each application to determine the quality of the planning process that the applicant will use to develop a comprehensive development plan and an application for a development grant based on the extent to which—

(1) The planning process is clearly and comprehensively described and based on sound planning practice;

(2) The president or chief executive officer, administrators and other institutional personnel, students, and governing board members systematically and consistently will be involved in the planning process;

(3) The applicant will use its own resources to help implement the project; and

(4) The planning process is likely to achieve its intended results.

(b) *Key personnel.* The Secretary reviews each application to determine the quality of key personnel to be involved in the project based on the extent to which—

(1) The past experience and training of key personnel such as the project coordinator and persons who have key roles in the planning process are suitable to the tasks to be performed; and

(2) The time commitments of key personnel are adequate.

(c) *Project Management.* The Secretary reviews each application to determine the quality of the plan to manage the project effectively based on the extent to which—

(1) The procedures for managing the project are likely to ensure effective and efficient project implementation; and

(2) The project coordinator has sufficient authority, including access to the president or chief executive officer, to conduct the project effectively.

(d) *Budget.* The Secretary reviews each application to determine the extent to which the proposed project costs are necessary and reasonable.

(Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1101 *et seq.*)

[64 FR 70147, Dec. 15, 1999, as amended at 70 FR 13373, Mar. 21, 2005]

§ 606.22 What are the selection criteria for development grants?

The Secretary evaluates an application for a development grant on the basis of the criteria in this section.

(a) *Quality of the applicant's comprehensive development plan.* The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution;

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis;

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution; and

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources.

(b) *Quality of activity objectives.* The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan.

(c) *Quality of implementation strategy.* The extent to which—

(1) The implementation strategy for each activity is comprehensive;

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects; and

(3) The timetable for each activity is realistic and likely to be attained.

(d) *Quality of key personnel.* The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives; and

(2) The time commitment of key personnel is realistic.

(e) *Quality of project management plan.* The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation; and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer.

(f) *Quality of evaluation plan.* The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan; and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan.

(g) *Budget.* The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

(Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1101 *et seq.*)

[64 FR 70147, Dec. 15, 1999, as amended at 70 FR 13373, Mar. 21, 2005]

§ 606.23 What special funding consideration does the Secretary provide?

(a) If funds are available to fund only one additional planning grant and each of the next fundable applications has received the same number of points under § 606.20 or 606.21, the Secretary awards additional points, as provided in the application package or in a notice published in the FEDERAL REGISTER, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at similar type institutions; or

(2) Has expenditures for library materials per full-time equivalent enrolled student which are less than the average expenditure for library materials per full-time equivalent enrolled student at similar type institutions.

(b) If funds are available to fund only one additional development grant and each of the next fundable applications has received the same number of points under § 606.20 or 606.22, the Secretary awards additional points, as provided in the application package or in a notice published in the FEDERAL REGISTER, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at comparable institutions that offer similar instruction;

(2) Has expenditures for library materials per full-time equivalent enrolled student that are less than the average expenditures for library materials per full-time equivalent enrolled student at comparable institutions that offer similar instruction; or

(3) Propose to carry out one or more of the following activities—

(i) Faculty development;

(ii) Funds and administrative management;

(iii) Development and improvement of academic programs;

(iv) Acquisition of equipment for use in strengthening management and academic programs;

(v) Joint use of facilities; and

(vi) Student services.

(c) As used in this section, an ''endowment fund'' does not include any fund established or supported under 34 CFR part 628.

(d) Each year, the Secretary provides prospective applicants with the average market value of endowment funds and the average expenditure of library materials per full-time equivalent student.

(e) The Secretary gives priority to each application that contains satisfactory evidence that the applicant has entered into or will enter into a collaborative arrangement with at least one local educational agency or community-based organization to provide that agency or organization with assistance (from funds other than funds provided under this part) in—

(1) Reducing the dropout rates of Hispanic students;

(2) Improving rates of academic achievement of Hispanic students; and

(3) Increasing the rates at which Hispanic high school graduates enroll in higher education.

(Authority: 20 U.S.C. 1101 *et seq.*)

[64 FR 70147, Dec. 15, 1999, as amended at 70 FR 13373, Mar. 21, 2005]

§ 606.24 How does the Secretary use an applicant's performance under a previous development grant when awarding a development grant?

(a)(1) In addition to evaluating an application under the selection criteria in § 606.22, the Secretary evaluates an applicant's performance under any previous development grant awarded under the Developing Hispanic-Serving Institutions Program that expired within five years of the year when the development grant will begin.

(2) The Secretary evaluates whether the applicant fulfilled, or is making substantial progress toward fulfilling, the goals and objectives of the previous grant, including, but not limited to, the applicant's success in institutionalizing practices developed and improvements made under the grant.

(3) The Secretary bases the evaluation of the applicant's performance on information contained in—

(i) Performance and evaluation reports submitted by the applicant;

(ii) Audit reports submitted on behalf of the applicant; and

(iii) Other information obtained by the Secretary, including reports prepared by the Department.

(b) If the Secretary initially determines that the applicant did not fulfill the goals and objectives of a previous grant or is not making substantial progress towards fulfilling those goals and objectives, the Secretary affords the applicant the opportunity to respond to that initial determination.

(c) If the Secretary determines that the applicant did not fulfill the goals and objectives of a previous grant or is not making substantial progress towards fulfilling those goals and objectives, the Secretary may—

(1) Decide not to fund the applicant; or

(2) Fund the applicant but impose special grant terms and conditions, such as specific reporting and monitoring requirements.

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.25 What priority does the Secretary use in awarding cooperative arrangement grants?

Among applications for cooperative arrangement grants, the Secretary gives priority to proposed cooperative arrangements that are geographically and economically sound, or will benefit the institutions applying for the grant.

(Authority: 20 U.S.C. 1101 *et seq.*)

Subpart D—What Conditions Must a Grantee Meet?

§ 606.30 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraphs (b) and (c) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1101 *et seq.*)

§ 606.31 How does a grantee maintain its eligibility?

(a) A grantee shall maintain its eligibility under the requirements in § 606.2, except for § 606.2(a)(3) and (4), for the duration of the grant period.

(b) The Secretary reviews an institution's application for a continuation award to ensure that—

(1) The institution continues to meet the eligibility requirements described in paragraph (a) of this section; and

(2) The institution is making substantial progress toward achieving the objectives described in its grant application including, if applicable, the institution's success in institutionalizing practices and improvements developed under the grant.

(Authority: 20 U.S.C. 1101 *et seq.*)

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

Subpart A—General

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AUTHORITY: 20 U.S.C. 1057–1059g, 1067q, 1068–1068h unless otherwise noted.

SOURCE: 52 FR 30529, Aug. 14, 1987, unless otherwise noted.

Subpart A—General

§ 607.1 What is the Strengthening Institutions Program?

The purpose of the Strengthening Institutions Program is to provide grants to eligible institutions of higher education to improve their academic programs, institutional management, and fiscal stability in order to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

(Authority: 20 U.S.C. 1057)

[59 FR 41921, Aug. 15, 1994]

§ 607.2 What institutions are eligible to receive a grant under the Strengthening Institutions Program?

(a) Except as provided in paragraphs (b) and (c) of this section, an institution of higher education is eligible to receive a grant under the Strengthening Institutions Program if—

(1) It has an enrollment of needy students as described in § 607.3(a), unless the Secretary waives this requirement under § 607.3(b);

(2) It has low average educational and general expenditures per full-time equivalent undergraduate student as

described in § 607.4(a), unless the Secretary waives this requirement under § 607.4(c).

(3) It is legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree; and

(4) It is accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered.

(b) A branch campus of an institution of higher education, if the institution as a whole meets the requirements of paragraphs (a)(1) through (4) of this section, is eligible to receive a grant under the Strengthening Institutions Program even if, by itself, it does not satisfy the requirements of paragraphs (a)(3) and (a)(4) of this section, although the branch must meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(c) For the purpose of paragraphs (e)(2) and (f)(2) of this section, an institution's enrollment consists of a head count of its entire student body.

(d) A tribal college or university may receive a grant authorized under section 316 of the HEA if—

(1) It satisfies the requirements of paragraph (a) of this section, other than § 607.2(a)(3), and

(2)(i) It meets the definition of the term ''tribally controlled college or university'' in section 2 of the Tribally Controlled College or University Assistance Act of 1978; or

(ii) It is listed in the Equity in Educational Land Grant Status Act of 1994.

(e) An Alaska Native-serving institution may receive a grant under section 317 of the HEA if—

(1) It satisfies the requirements of paragraph (a) of this section; and

(2) It has, at the time of application, an enrollment of undergraduate students that is at least 20 percent Alaska Native students.

(f) A Native Hawaiian-serving institution may receive a grant authorized under section 317 of the HEA if—

(1) It satisfies the requirements of paragraph (a) of this section; and

(2) It has, at the time of application, an enrollment of undergraduate students that is at least 10 percent Native Hawaiian students.

(g)(1) An institution that qualifies for a grant under the Strengthening Historically Black Colleges and Universities Program (34 CFR part 608) or the Developing Hispanic-Serving Institutions Program (34 CFR part 606) and receives a grant under either of these programs for a particular fiscal year is not eligible to receive a grant under this part for the same fiscal year.

(2) A tribal college or university that receives a grant under section 316 of the HEA or an Alaska Native or Native Hawaiian-serving institution that receives a grant under section 317 of the HEA may not concurrently receive other grant funds under the Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, or Strengthening Historically Black Graduate Institutions Program.

(Authority: 20 U.S.C. 1057 *et seq.*)

[59 FR 41922, Aug. 15, 1994, as amended at 60 FR 15447, Mar. 23, 1995; 64 FR 70153, Dec. 15, 1999]

§ 607.3 What is an enrollment of needy students?

(a) Except as provided in paragraph (b) of this section, for the purpose of § 607.2(a)(1), an applicant institution has an enrollment of needy students if in the base year—

(1) At least 50 percent of its degree students received student financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study, and Perkins Loan; or

(2) The percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction.

(b) The Secretary may waive the requirement contained in paragraph (a) of this section if the institution demonstrates that—

(1) The State provides more than 30 percent of the institution's budget and the institution charges not more than

$99.00 for tuition and fees for an academic year;

(2) At least 30 percent of the students served by the institution in the base year were students from low-income families;

(3) The institution substantially increases the higher education opportunities for low-income students who are also educationally disadvantaged, underrepresented in postsecondary education, or minority students;

(4) The institution substantially increases the higher education opportunities for individuals who reside in an area that is not included in a ''metropolitan statistical area'' as defined by the Office of Management and Budget and who are unserved by other postsecondary institutions;

(5) The institution is located on or within 50 miles of an Indian reservation, or a substantial population of Indians and the institution will, if granted the waiver, substantially increase higher education opportunities for American Indians;

(6) It is a tribal college or university; or

(7) The institution will, if granted the waiver, substantially increase the higher education opportunities for Black Americans, Hispanic Americans, Native Americans, Asian Americans or Pacific Islanders, including Native Hawaiians.

(c) For the purpose of paragraph (b) of this section, the Secretary considers ''low-income'' to be an amount which does not exceed 150 percent of the amount equal to the poverty level as established by the United States Bureau of the Census.

(d) Each year, the Secretary notifies prospective applicants through a notice in the FEDERAL REGISTER of the low-income figures.

(Authority: 20 U.S.C. 1058 and 1067)

[52 FR 30529, Aug. 14, 1987, as amended at 60 FR 15447, Mar. 23, 1995; 64 FR 70153, Dec. 15, 1999]

§ 607.4 What are low educational and general expenditures?

(a)(1) Except as provided in paragraph (b) of this section, for the purpose of § 6072(a)(2), an applicant institution's average educational and general expenditures per full-time equivalent undergraduate student in the base year must be less than the average educational and general expenditures per full-time equivalent undergraduate student of comparable institutions that offer similar institution in that year.

(2) For the purpose of paragraph (a)(1) of this section, the Secretary determines the average educational and general expenditure per FTE undergraduate student for institutions with graduate students that do not differentiate between graduate and undergraduate E&G expenditures by discounting the graduate enrollment using a factor of 2.5 times the number of graduate students.

(b) Each year, the Secretary notifies prospective applicants through a notice in the FEDERAL REGISTER of the average educational and general expenditures per full-time equivalent undergraduate student at comparable institutions that offer similar instruction.

(c) The Secretary may waive the requirement contained in paragraph (a) of this section, if the Secretary determines, based upon persuasive evidence provided by the institution, that—

(1) The institution's failure to satisfy the criteria in paragraph (a) of this section was due to factors which, if used in determining compliance with those criteria, distorted that determination; and

(2) The institution's designation as an eligible institution under this part is otherwise consistent with the purposes of this part.

(d) For the purpose of paragraph (c)(1) of this section, the Secretary considers that the following factors may distort an institution's educational and general expenditures per full-time equivalent undergraduate student—

(1) Low student enrollment;

(2) Location of the institution in an unusually high cost-of-living area;

(3) High energy costs;

(4) An increase in State funding that was part of a desegregation plan for higher education; or

(5) Operation of high cost professional schools such as medical or dental schools.

(Authority: 20 U.S.C. 1058 and 1067)

[59 FR 41922, Aug. 15, 1994]

§ 607.5 How does an institution apply to be designated an eligible institution?

An institution shall apply to the Secretary to be designated an eligible institution under the Strengthening Institutions Program by submitting an application to the Secretary in the form, manner and time established by the Secretary. The application must contain—

(a) The information necessary for the Secretary to determine whether the institution satisfies the requirements of §§ 607.2, 607.3(a) and 607.4(a);

(b) Any waiver request under §§ 607.3(b) and 607.4(c); and

(c) Information or explanations justifying any requested waiver.

(Authority: 20 U.S.C. 1058 and 1067)

§ 607.6 What regulations apply?

The following regulations apply to the Strengthening Institutions Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) [Reserved]

(2) 34 CFR part 75 (Direct Grant Programs), except 34 CFR 75.128(a)(2) and 75.129(a) in the case of applications for cooperative arrangements.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) [Reserved]

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 607.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1057)

[59 FR 41922, Aug. 15, 1994, as amended at 79 FR 76100, Dec. 19, 2014]

§ 607.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms that apply to the Institutional Aid Programs are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Grant
Grantee
Grant period
Nonprofit
Private
Project period
Public
Secretary
State

(b) The following term used in this part is defined in section 312 of the HEA:

Endowment fund

(c) The following terms used in this part are defined in section 316 of the HEA:

Indian
Indian tribe
Tribal college or university

(d) The following terms used in this part are defined in section 317 of the HEA:

Alaska Native
Alaska Native-serving institution
Native Hawaiian
Native Hawaiian-serving institution

(e) The following definitions also apply to this part:

Accredited means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

Activity means an action that is incorporated into an implementation plan designed to meet one or more objectives. An activity is a part of a project and has its own budget that is approved to carry out the objectives of that subpart.

Base year means the second fiscal year preceding the fiscal year for which an institution seeks a grant under this part.

Branch campus means a unit of a college or university that is geographically apart from the main campus of the college or university and independent of that main campus. The Secretary considers a unit of a college or university to be independent of the main campus if the unit—

(1) Is permanent in nature;

(2) Offers courses for credit and programs leading to an associate or bachelor's degree; and

(3) Is autonomous to the extent that it has—

(i) Its own faculty and administrative or supervisory organization; and

(ii) Its own budgetary and hiring authority.

Comparable institutions that offer similar instruction means institutions that are being compared with an applicant institution and that fall within one of the following four categories—

(1) Public junior or community colleges;

(2) Private nonprofit junior or community colleges;

(3) Public institutions that offer an educational program for which they offer a bachelor's degree; or

(4) Private nonprofit institutions that offer an educational program for which they offer a bachelor's degree.

Cooperative arrangement means an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part and another eligible or ineligible institution of higher education, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Degree student means a student who enrolls at an institution for the purpose of obtaining the degree, certificate, or other recognized educational credential offered by that institution.

Developmental program and services means new or improved programs and services, beyond those regularly budgeted, specifically designed to improve the self sufficiency of the school.

Educational and general expenditures means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

Educationally disadvantaged means a college student who requires special services and assistance to enable them to succeed in higher education. The phrase includes, but is not limited to, students who come from—

(1) Economically disadvantaged families;

(2) Limited English proficiency families;

(3) Migrant worker families; or

(4) Families in which one or both of their parents have dropped out of secondary school.

Federal Pell Grant Program means the grant program authorized by title IV-A-1 of the HEA.

Federal Perkins Loan Program, formerly called the National Direct Student Loan Program, means the loan program authorized by title IV-E of the HEA.

Federal Supplemental Education Opportunity Grant Program means the grant program authorized by title IV-A-3 of the HEA.

Federal Work-Study Program means the part-time employment program authorized under title IV-C of the HEA.

Full-time equivalent students means the sum of the number of students enrolled full-time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

HEA means the Higher Education Act of 1965, as amended.

Hispanic student means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Institution of higher education means an educational institution defined in section 101 of the HEA.

Junior or community college means an institution of higher education—

(1) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) That does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

(3) That—

(i) Provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree, or

(ii) Offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of Census.

Minority student means a student who is Alaskan Native, American Indian, Asian-American, Black (African-American), Hispanic American, Native Hawaiian, or Pacific Islander.

Nationally recognized accrediting agency or association means an accrediting agency or association that the Secretary has recognized to accredit or preaccredit a particular category of institution in accordance with the provisions contained in 34 CFR part 603. The Secretary periodically publishes a list of those nationally recognized accrediting agencies and associations in the FEDERAL REGISTER.

Operational programs and services means the regular, ongoing budgeted programs and services at an institution.

Preaccredited means a status that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is progressing toward accreditation within a reasonable period of time.

Project means all the funded activities under a grant.

Self-sufficiency means the point at which an institution is able to survive without continued funding under the Strengthening Institutions Program.

Underrepresented means proportionate representation as measured by degree recipients, that is less than the proportionate representation in the general population—

(1) As indicated by—

(i) The most current edition of the Department's *Digest of Educational Statistics;*

(ii) The National Research Council's *Doctorate Recipients from United States Universities;* or

(iii) Other standard statistical references, as announced annually in the FEDERAL REGISTER notice inviting applications for new awards under this program; or

(2) As documented by national survey data submitted to and accepted by the Secretary on a case-by-case basis.

(Authority: 20 U.S.C. 1051, 1057–1059 and 1066–1069f; OMB Directive No. 15)

[52 FR 30529, Aug. 14, 1987, as amended at 59 FR 41922, Aug. 15, 1994; 60 FR 15447, Mar. 23, 1995; 64 FR 70153, Dec. 15, 1999]

§ 607.8 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan is an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Academic programs;

(2) Institutional management; and

(3) Fiscal stability.

(b) The comprehensive development plan must include the following:

(1) An analysis of the strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability.

(2) A delineation of the institution's goals for its academic programs, institutional management, and fiscal stability, based on the outcomes of the analysis described in paragraph (b)(1) of this section.

(3) Measurable objectives related to reaching each goal and timeframes for achieving the objectives.

(4) Methods and resources that will be used to institutionalize practices and improvements developed under the proposed project.

(5) For a grant under section 316 of the HEA to a tribal college or university, its five-year plan for improving its services to Indian students, increasing the rates at which Indian secondary school students enroll in higher

education, and increasing overall postsecondary retention rates for Indian students.

(6) For a grant under section 317 of the HEA to an Alaska Native-serving institution or to a Native Hawaiian-serving institution, its five-year plan for improving its services to Alaska Native or Native Hawaiian students, respectively.

(Authority: 20 U.S.C. 1066)

[59 FR 41923, Aug. 15, 1994, as amended at 64 FR 70154, Dec. 15, 1999]

§ 607.9 What are the type, duration and limitations in the awarding of grants under this part?

(a)(1) Under this part, the Secretary may award planning grants and two types of development grants, individual development grants and cooperative arrangement development grants.

(2) Planning grants may be awarded for a period not to exceed one year.

(3) Either type of development grant may be awarded for a period of five years.

(b)(1) An institution that received an individual development grant of five years may not subsequently receive another individual development grant for a period of two years from the date on which the five-year grant period terminates.

(2) A cooperative arrangement grant is not considered to be an individual development grant under paragraph (b)(1) of this section.

(Authority: 20 U.S.C. 1059)

[52 FR 30529, Aug. 14, 1987, as amended at 59 FR 41923, Aug. 15, 1994; 64 FR 70154, Dec. 15, 1999]

§ 607.10 What activities may and may not be carried out under a grant?

(a) *Planning grants.* Under a planning grant, a grantee shall formulate—

(1) A comprehensive development plan described in § 607.8; and

(2) An application for a development grant.

(b) *Development grants—allowable activities.* Under a development grant, except as provided in paragraph (c) of this section, a grantee shall carry out activities that implement its comprehensive development plan and hold promise for strengthening the institution. Activities that may be carried out include, but are not limited to—

(1) Faculty exchanges, faculty fellowships, and faculty development that provide faculty with the skills and knowledge needed to—

(i) Develop academic support services, including advising and mentoring students;

(ii) Develop academic programs or methodology, including computer-assisted instruction, that strengthen the academic quality of the institution; or

(iii) Acquire terminal degrees that are required to obtain or retain accreditation of an academic program or department;

(2) Funds and administrative management that will improve the institution's ability to—

(i) Manage financial resources in an efficient and effective manner; and

(ii) Collect, access, and use information about the institution's operations for improved decisionmaking;

(3) Developing and improving academic programs that enable the institution to—

(i) Develop new academic programs or new program options that show promise for increased student enrollment;

(ii) Provide new technology or methodology to increase student success and retention or to retain accreditation; or

(iii) Improve curriculum or methodology for existing academic programs to stabilize or increase student enrollment;

(4) Acquiring equipment for use in strengthening management and academic programs to achieve objectives such as those described in paragraphs (b)(2) and (b)(3) of this section;

(5) Establishing or increasing the joint use of facilities such as libraries and laboratories to—

(i) Eliminate the distance and high cost associated with providing academic programs and academic support; or

(ii) Provide clinical experience that is part of an approved academic program at off-campus locations;

(6) Developing or improving student services to provide—

(i) New or improved methods to deliver student services, including counseling, tutoring, and instruction in basic skills; or

(ii) Improved strategies to train student services personnel;

(7) Payment of any portion of the salary of a dean, with proper justification, to fill a position under the project such as project coordinator or activity director. For purposes of this paragraph, proper justification includes evidence that the position entitled ''Dean'' is not one that has college-wide administrative authority and responsibility;

(8) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(9) Construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities, including the integration of computer technology into institutional facilities to create smart buildings;

(10) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector;

(11) Establishing or improving an endowment fund, provided a grantee uses no more than 20 percent of its grant funds for this purpose and at least matches those grant funds with non-Federal funds;

(12) Creating or improving facilities for Internet or other distance learning academic instruction capabilities, including purchase or rental of telecommunications technology equipment or services;

(13) For grants authorized under section 316 of the HEA to tribal colleges or universities—

(i) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(ii) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

(iii) Support of faculty exchanges, faculty development, and faculty fellowships to assist in attaining advanced degrees in their field of instruction;

(iv) Curriculum development and academic instruction;

(v) Purchase of library books, periodicals, microfilm, and other educational materials, including telecommunications program materials;

(vi) Funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(vii) Joint use of facilities such as laboratories and libraries; and

(viii) Academic tutoring and counseling programs and student support services designed to improve academic services;

(ix) Academic instruction in disciplines in which Indians are underrepresented;

(x) Establishing or improving a development office to strengthen or improve contributions from the alumni and the private sector;

(xi) Establishing or enhancing a program of teacher education designed to qualify students to teach in elementary schools or secondary schools, with a particular emphasis on teaching Indian children and youth, that shall include, as part of such program, preparation for teacher certification;

(xii) Establishing community outreach programs that encourage Indian elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education; and

(xiii) Establishing or improving an endowment fund, provided a grantee uses no more than 20 percent of its grant funds for this purpose and at least matches those grant funds with non-Federal funds; or

(14) For grants authorized under section 317 of the HEA to Alaska Native-serving institutions and Native Hawaiian-serving institutions—

(i) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(ii) Renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(iii) Support of faculty exchanges, faculty development, and faculty fellowships to assist in attaining advanced degrees in the faculty's field of instruction;

(iv) Curriculum development and academic instruction;

(v) Purchase of library books, periodicals, microfilm, and other educational materials;

(vi) Funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(vii) Joint use of facilities such as laboratories and libraries;

(viii) Academic tutoring and counseling programs and student support services.

(c) *Development grants—unallowable activities.* A grantee may not carry out the following activities or pay the following costs under a development grant:

(1) Activities that are not included in the grantee's approved application.

(2) Activities that are inconsistent with any State plan for higher education that is applicable to the institution, including, but not limited to, a State plan for desegregation of higher education.

(3) Activities or services that relate to sectarian instruction or religious worship.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation or to prepare them to teach theological subjects.

(5) Developing or improving non-degree or non-credit courses other than basic skills development courses.

(6) Developing or improving community-based or community services programs, unless the program provides academic-related experiences or academic credit toward a degree for degree students, or unless it is an outreach program that encourages Indian elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

(7) Purchase of standard office equipment, such as furniture, file cabinets, bookcases, typewriters, or word processors.

(8) Payment of any portion of the salary of a president, vice president, or equivalent officer who has college-wide administrative authority and responsibility at an institution to fill a position under the grant such as project coordinator or activity director.

(9) Costs of organized fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.

(10) Costs of student recruitment such as advertisements, literature, and college fairs.

(11) Services to high school students, unless they are part of a program to encourage Indian students to develop the academic skills and the interest to pursue postsecondary education.

(12) Instruction in the institution's standard courses as indicated in the institution's catalog.

(13) Costs for health and fitness programs, transportation, and day care services.

(14) Student activities such as entertainment, cultural, or social enrichment programs, publications, social clubs, or associations.

(15) Activities that are operational in nature rather than developmental in nature.

(d) *Endowment funds.* If a grantee uses part of its grant funds to establish or increase an endowment fund under paragraphs (b)(11) or (b)(13)(xiii) of this section, it must comply with the provisions of §§ 628.3, 628.6, 628.10 and 628.41 through 628.47 of this chapter with regard to the use of those funds, except—

(1) The definition of the term ''endowment fund income'' in § 628.6 of this chapter does not apply. For the purposes of this paragraph (d), ''endowment fund income'' means an amount equal to the total value of the fund, including fund appreciation and retained interest and dividends, minus the endowment fund corpus.

(2) Instead of the requirement in § 628.10(a) of this chapter, the grantee

institution must match each dollar of Federal grant funds used to establish or increase an endowment fund with one dollar of non-Federal funds; and

(3) Instead of the requirements in § 628.41(a)(3) through (a)(5) and the introductory text in § 628.41(b) and § 628.41(b)(2) and (b)(3) of this chapter, if a grantee institution decides to use any of its grant funds for endowment purposes, it must match those grant funds immediately with non-Federal funds when it places those funds into its endowment fund.

(Authority: 20 U.S.C. 1057 *et seq.*)

[52 FR 30529, Aug. 14, 1987, as amended at 59 FR 41923, Aug. 15, 1994; 60 FR 15447, Mar. 23, 1995; 64 FR 70154, Dec. 15, 1999; 65 FR 79310, Dec. 19, 2000]

Subpart B—How Does an Institution Apply for a Grant?

§ 607.11 What must be included in individual development grant applications?

In addition to the information needed by the Secretary to determine whether the institution should be awarded a grant under the funding criteria contained in subpart C, an application for a development grant must include—

(a) The institution's comprehensive development plan;

(b) A description of the relationship of each activity for which grant funds are requested to the relevant goals and objectives of its plan;

(c) A description of any activities that were funded under previous development grants awarded under the Strengthening Institutions Program that expired within five years of when the development grant will begin and the institution's justification for not completing the activities under the previous grant, if applicable; and

(d) If the applicant is applying to carry out more than one activity—

(1) A description of those activities that would be a sound investment of Federal funds if funded separately;

(2) A description of those activities that would be a sound investment of Federal funds only if funded with the other activities; and

(3) A ranking of the activities in preferred funding order.

(Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1057 *et seq.*)

[52 FR 30529, Aug. 14, 1987, as amended at 59 FR 41924, Aug. 15, 1994; 60 FR 15447, Mar. 23, 1995; 64 FR 70155, Dec. 15, 1999]

§ 607.12 What must be included in cooperative arrangement grant applications?

(a)(1) Institutions applying for a cooperative arrangement grant shall submit only one application for that grant regardless of the number of institutions participating in the cooperative arrangement.

(2) The application must include the names of each participating institution, the role of each institution, and the rationale for each eligible participating institution's decision to request grant funds as part of a cooperative arrangement rather than as an individual grantee.

(b) If the application is for a development grant, the application must contain—

(1) Each participating institution's comprehensive development plan;

(2) The information required under § 607.11; and

(3) An explanation from each eligible participating institution of why participation in a cooperative arrangement grant rather than performance under an individual grant will better enable it to meet the goals and objectives of its comprehensive development plan at a lower cost.

(4) The name of the applicant for the group that is legally responsible for—

(i) The use of all grant funds; and

(ii) Ensuring that the project is carried out by the group in accordance with Federal requirements.

(Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1066 and 1069)

[52 FR 30529, Aug. 14, 1987, as amended at 59 FR 41924, Aug. 15, 1994]

§ 607.13 How many applications for a development grant may an institution submit?

In any fiscal year, an institution of higher education that meets the eligibility requirements under sections 311, 316, and 317 of the HEA may—

(a) Submit an application for a development grant authorized under sections 311, 316, and 317 of the HEA; and

(b) Be part of a cooperative arrangement application.

(Authority: 20 U.S.C. 1057, 1069)

[59 FR 41924, Aug. 15, 1994, as amended at 64 FR 70155, Dec. 15, 1999]

Subpart C—How Does the Secretary Make an Award?

§ 607.20 How does the Secretary choose applications for funding?

(a) The Secretary evaluates an application on the basis of the criteria in—

(1) Sections 607.21 and 607.23 for a planning grant; and

(2) Sections 607.22, 607.23, 607.24, and 607.25 for a development grant.

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(c)(1) With regard to applicants that satisfy the requirements of paragraph (d) of this section, for each fiscal year, the Secretary awards individual development grants to applicants that are not individual development grantees under this part, before the Secretary awards an individual development grant to any applicant that is an individual grantee under this part.

(2) For purposes of paragraph (c)(1) of this section, an institution that is a recipient of a cooperative arrangement grant is not an individual grantee under this part.

(d) The Secretary considers funding an application for a development grant that—

(1) Is submitted with a comprehensive development plan that satisfies all the elements required of such a plan under § 607.8; and

(2) In the case of an application for a cooperative arrangement grant, demonstrates that the grant will enable each eligible participant to meet the goals and objectives of its comprehensive development plan better and at a lower cost than if each eligible participant were funded individually.

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

[59 FR 41924, Aug. 15, 1994, as amended at 60 FR 15447, Mar. 23, 1995; 64 FR 70155, Dec. 15, 1999; 70 FR 13373, Mar. 21, 2005]

§ 607.21 What are the selection criteria for planning grants?

The Secretary evaluates an application for a planning grant on the basis of the criteria in this section.

(a) *Design of the planning process.* The Secretary reviews each application to determine the quality of the planning process that the applicant will use to develop a comprehensive development plan and an application for a development grant based on the extent to which—

(1) The planning process is clearly and comprehensively described and based on sound planning practice;

(2) The president or chief executive officer, administrators and other institutional personnel, students, and governing board members systematically and consistently will be involved in the planning process;

(3) The applicant will use its own resources to help implement the project; and

(4) The planning process is likely to achieve its intended results.

(b) *Key personnel.* The Secretary reviews each application to determine the quality of key personnel to be involved in the project based on the extent to which—

(1) The past experience and training of key personnel such as the project coordinator and persons who have key roles in the planning process are suitable to the tasks to be performed; and

(2) The time commitments of key personnel are adequate.

(c) *Project Management.* The Secretary reviews each application to determine the quality of the plan to manage the project effectively based on the extent to which—

(1) The procedures for managing the project are likely to ensure effective and efficient project implementation; and

(2) The project coordinator has sufficient authority, including access to the

president or chief executive officer, to conduct the project effectively.

(d) *Budget.* The Secretary reviews each application to determine the extent to which the proposed project costs are necessary and reasonable.

(Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1057–1059, 1066–1069)

[52 FR 30529, Aug. 14, 1987, as amended at 70 FR 13374, Mar. 21, 2005]

§ 607.22 What are the selection criteria for development grants?

The Secretary evaluates an application for a development grant on the basis of the criteria in this section.

(a) *Quality of the applicant's comprehensive development plan.* The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution;

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis;

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution; and

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources.

(b) *Quality of activity objectives.* The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan.

(c) *Quality of implementation strategy.* The extent to which—

(1) The implementation strategy for each activity is comprehensive;

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects; and

(3) The timetable for each activity is realistic and likely to be attained.

(d) *Quality of key personnel.* The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives; and

(2) The time commitment of key personnel is realistic.

(e) *Quality of project management plan.* The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation; and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer.

(f) *Quality of evaluation plan.* The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan; and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan.

(g) *Budget.* The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

(Approved by the Office of Management and Budget under control number 1840–0114)

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

[59 FR 41924, Aug. 15, 1994, as amended at 70 FR 13374, Mar. 21, 2005]

§ 607.23 What special funding consideration does the Secretary provide?

(a) If funds are available to fund only one additional planning grant and each

of the next fundable applications has received the same number of points under § 607.20 or 607.21, the Secretary awards additional points, as provided in the application package or in a notice published in the FEDERAL REGISTER, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at similar type institutions; or

(2) Has expenditures for library materials per full-time equivalent enrolled student which is less than the average expenditure for library materials per full-time equivalent enrolled student at similar type institutions.

(b) If funds are available to fund only one additional development grant and each of the next fundable applications has received the same number of points under § 607.20 or 607.22, the Secretary awards additional points, as provided in the application package or in a notice published in the FEDERAL REGISTER, to any of those applicants that—

(1) Has an endowment fund of which the current market value, per full-time equivalent enrolled student, is less than the average current market value of the endowment funds, per full-time equivalent enrolled student, at comparable institutions that offer similar instruction;

(2) Has expenditures for library materials per full-time equivalent enrolled student which are less than the average expenditures for library materials per full-time equivalent enrolled student at comparable institutions that offer similar instruction; or

(3) Propose to carry out one or more of the following activities—

(i) Faculty development;

(ii) Funds and administrative management;

(iii) Development and improvement of academic programs;

(iv) Acquisition of equipment for use in strengthening management and academic programs;

(v) Joint use of facilities; and

(vi) Student services.

(c) As used in this section, an endowment fund does not include any fund established or supported under 34 CFR part 628.

(d) Each year, the Secretary provides prospective applicants with the average expenditure of endowment funds and library materials per full-time equivalent student.

(Authority: 20 U.S.C. 1057 *et seq.*)

[52 FR 30529, Aug. 14, 1987, as amended at 59 FR 41925, Aug. 15, 1994; 60 FR 15447, Mar. 23, 1995; 64 FR 70155, Dec. 15, 1999; 70 FR 13374, Mar. 21, 2005]

§ 607.24 How does the Secretary use an applicant's performance under a previous development grant when awarding a development grant?

(a)(1) In addition to evaluating an application under the selection criteria in § 607.22, the Secretary evaluates an applicant's performance under any previous development grant awarded under the Strengthening Institutions Program that expired within five years of the year when the development grant will begin.

(2) The Secretary evaluates whether the applicant fulfilled, or is making substantial progress toward fulfilling, the goals and objectives of the previous grant, including, but not limited to, the applicant's success in institutionalizing practices developed and improvements made under the grant.

(3) The Secretary bases the evaluation of the applicant's performance on information contained in—

(i) Performance and evaluation reports submitted by the applicant;

(ii) Audit reports submitted on behalf of the applicant; and

(iii) Other information obtained by the Secretary, including reports prepared by the Department.

(b) If the Secretary initially determines that the applicant did not fulfill the goals and objectives of a previous grant or is not making substantial progress towards fulfilling those goals and objectives, the Secretary affords the applicant the opportunity to respond to that initial determination.

(c) If the Secretary determines that the applicant did not fulfill the goals and objectives of a previous grant or is not making substantial progress towards fulfilling those goals and objectives, the Secretary may—

(1) Decide not to fund the applicant; or

(2) Fund the applicant but impose special grant terms and conditions, such as specific reporting and monitoring requirements.

(Authority: 20 U.S.C. 1066)

[59 FR 41925, Aug. 15, 1994, as amended at 64 FR 70155, Dec. 15, 1999]

§ 607.25 What priority does the Secretary use in awarding cooperative arrangement grants?

Among applications for cooperative arrangement grants, the Secretary gives priority to proposed cooperative arrangements that are geographically and economically sound, or will benefit the institutions applying for the grant.

(Authority: 20 U.S.C. 1057, 1069)

[59 FR 41925, Aug. 15, 1994]

Subpart D—What Conditions Must a Grantee Meet?

§ 607.30 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraphs (b) and (c) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1057–1059 and 1066)

§ 607.31 How does a grantee maintain its eligibility?

(a) A grantee shall maintain its eligibility under the requirements in § 607.2, except for § 607.2(a) (1) and (2), for the duration of the grant period.

(b) The Secretary reviews an institution's application for a continuation award to ensure that—

(1) The institution continues to meet the eligibility requirements described in paragraph (a) of this section; and

(2) The institution is making substantial progress toward achieving the objectives set forth in its grant application including, if applicable, the institution's success in institutionalizing practices and improvements developed under the grant.

(Authority: 20 U.S.C. 1057–1059b, 1066–1069f)

[59 FR 41925, Aug. 15, 1994]

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

Subpart A—General

Sec.
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608.2 What institutions are eligible to receive a grant under the HBCU Program?
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608.42 Under what conditions does the Secretary terminate a grant?

AUTHORITY: 20 U.S.C. 1060 through 1063a, 1063c, 1067q and 1068–1068h, unless otherwise noted.

SOURCE: 58 FR 38713, July 20, 1993, unless otherwise noted.

Subpart A—General

§ 608.1 What is the Strengthening Historically Black Colleges and Universities (HBCU) Program?

The Strengthening Historically Black Colleges and Universities Program, hereafter called the HBCU Program, provides grants to Historically Black Colleges and Universities (HBCUs) to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity.

(Authority: 20 U.S.C. 1060)

§ 608.2 What institutions are eligible to receive a grant under the HBCU Program?

(a) To be eligible to receive a grant under this part, an institution must—

(1) Satisfy section 322(2) of the Higher Education Act of 1965, as amended (HEA);

(2) Be legally authorized by the State in which it is located—

(i) To be a junior or community college; or

(ii) To provide an educational program for which it awards a bachelor's degree; and

(3) Be accredited or preaccredited by a nationally recognized accrediting agency or association.

(b) The Secretary has determined that the following institutions satisfy section 322(2) of the HEA.

ALABAMA

Alabama A&M University-Huntsville
Alabama State University—Montgomery
Carver State Technical College—Mobile
Concordia College—Selma
Fredd State Technical College—Tuscaloosa
J.F. Drake State Technical College—Huntsville
S.D. Bishop State Junior College—Mobile
Lawson State College—Birmingham
Miles College—Birmingham
Oakwood College—Huntsville
Selma University—Selma
Stillman College—Tuscaloosa
Talladega University—Talladega
Trenholm State Technical College—Montgomery
Tuskegee University—Tuskegee

ARKANSAS

Arkansas Baptist College—Little Rock
Philander Smith College—Little Rock
Shorter College—Little Rock
University of Arkansas at Pine Bluff—Pine Bluff

DELAWARE

Delaware State College—Dover

DISTRICT OF COLUMBIA

Howard University
University of the District of Columbia

FLORIDA

Bethune Cookman College—Daytona Beach
Edward Waters College—Jacksonville
Florida A&M University—Tallahassee
Florida Memorial College—Miami

GEORGIA

Albany State College—Albany
Atlanta University—Atlanta
Clark College—Atlanta
Fort Valley State College—Fort Valley
Interdenominational Theological Center—Atlanta
Morehouse College—Atlanta
Morris Brown College—Atlanta
Paine College—Augusta
Savannah State College—Savannah
Spelman College—Atlanta

KENTUCKY

Kentucky State University—Frankfurt

LOUISIANA

Dillard University—New Orleans
Grambling State University—Grambling
Southern University A&M College—Baton Rouge
Southern University at New Orleans—New Orleans
Southern University at Shreveport—Shreveport
Xavier University of Louisiana—New Orleans

MARYLAND

Bowie State College—Bowie
Coppin State College—Baltimore
Morgan State University—Baltimore
University of Maryland-Eastern Shore—Princess Anne

MICHIGAN

Lewis College of Business—Detroit

MISSISSIPPI

Alcorn State University—Lorman
Coahoma Junior College—Clarksdale
Jackson State University—Jackson
Mary Holmes College—West Point

Mississippi Valley State University—Itta Bena
Prentiss Normal and Industrial Institute—Prentiss
Rust College—Holly Springs
Tougaloo College—Tougaloo
Hinds Junior College (Utica Jr Coll)—Raymond

MISSOURI

Lincoln University—Jefferson City
Harris-Stowe State College—St. Louis

NORTH CAROLINA

Barber-Scotia College—Concord
Bennett College—Greensboro
Elizabeth City State University—Elizabeth City
Fayetteville State University—Fayetteville
Johnson C. Smith University—Charlotte
Livingstone College—Salisbury
North Carolina A&T State University—Greensboro
North Carolina Central University—Durham
Saint Augustine's College—Raleigh
Shaw University—Raleigh
Winston-Salem State University—Winston Salem

OHIO

Central State University—Wilberforce
Wilberforce University—Wilberforce

OKLAHOMA

Langston University—Langston

PENNSYLVANIA

Cheyney State University—Cheyney
Lincoln University—Lincoln

SOUTH CAROLINA

Allen University—Columbia
Benedict College—Columbia
Claflin College—Orangeburg
Clinton Junior College—Rock Hill
Denmark Technical College—Denmark
Morris College—Sumter
South Carolina State College—Orangeburg
Voorhees College—Denmark

TENNESSEE

Fisk University—Nashville
Knoxville College—Knoxville
Lane College—Jackson
LeMoyne-Owen College—Memphis
Meharry Medical College—Nashville
Morristown College—Morristown
Tennessee State University—Nashville

TEXAS

Huston-Tillotson College—Austin
Jarvis Christian College—Hawkins
Paul Quinn College—Waco
Prairie View A&M University—Prairie View
Saint Philip's College—San Antonio
Southwestern Christian College—Terrell
Texas College—Tyler
Texas Southern University—Houston
Wiley College—Marshall

U.S. VIRGIN ISLANDS

College of the Virgin Islands—St. Thomas

Virginia

Hampton University—Hampton
Norfolk State University—Norfolk
Saint Paul's College—Lawrenceville
Virginia State University—Petersburg
Virginia Union University—Richmond

WEST VIRGINIA

Bluefield State College—Bluefield
West Virginia State College—Institute

(c) If an institution identified in paragraph (b) of this section has merged with another institution, and, as a result of the merger, would not otherwise qualify to receive a grant under this part, that institution may nevertheless qualify to receive a grant under this part if—

(1) The institution would have qualified to receive a grant before the merger; and

(2) The institution was eligible to receive a grant under the Special Needs Program in any fiscal year prior to fiscal year 1986. (The Special Needs Program was authorized under Title III, Part B, of the HEA before 1986.)

(d) For the purpose of paragraph (a)(3) of this section, the Secretary publishes a list in the FEDERAL REGISTER of nationally recognized accrediting agencies and associations.

(e) Notwithstanding any other provision of this section, for each fiscal year—

(1) The University of the District of Columbia is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the same fiscal year under the District of Columbia Self-Government and Governmental Reorganization Act; and

(2) Howard University is eligible to receive a grant under this part only if the amount of the grant it is scheduled to receive under § 608.31 exceeds the amount it is scheduled to receive in the

same fiscal year under the Act of March 2, 1867, 20 U.S.C. 123.

(Authority: 20 U.S.C. 1061, 1063, and 1063a; House Report 99–861, 99th Cong., 2d Sess. p. 367, September 22, 1986; Senate Report 99–296, 99th Cong., 2d Sess. p. 23, May 12, 1986; Cong. Rec. of June 3, 1986, pp. 6588–6589)

§ 608.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) as follows:

(1) [Reserved]

(2) The following sections of 34 CFR part 75 (Direct Grant Programs): §§ 75.1–75.104, 75.125–75.129, 75.190–75.192, 75.230–75.261, 75.500, 75.510–75.519, 75.524–75.534, 75.580–75.903, and 75.910;

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) [Reserved]

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 608.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1060–1063a, 1063c)

[58 FR 38713, July 20, 1993, as amended at 79 FR 76101, Dec. 19, 2014]

§ 608.4 What definitions apply?

(a) *General definitions*. The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

Applicant	Fiscal year
Application	Grant period
Award	Private
Budget	Project period
EDGAR	Public
Equipment	Secretary

(b) *Other definitions*. The following definitions also apply to this part:

Accredited means the status of public recognition which a nationally recognized accrediting agency or association grants to an institution which meets certain established qualifications and educational standards.

Graduate means a student who has attended an institution for at least three semesters and fulfilled academic requirements for undergraduate studies in not more than five consecutive school years.

Junior or community college means an institution of higher education that—

(i) Admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(ii) Does not provide an educational program for which it awards a bachelor's degree or an equivalent degree; and

(iii) Provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree; or offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

Pell Grant means the grant program authorized by Title IV-A-1 of the Higher Education Act of 1965, as amended.

Preaccredited means a status, also called candidacy status, that a nationally recognized accrediting agency or association, recognized by the Secretary to grant that status, has accorded an unaccredited institution that is making reasonable progress toward accreditation.

School year means the period of time from July 1 of one calendar year through June 30 of the subsequent calendar year. (A ''school year'' is equivalent to an ''award year'' under the Pell Grant Program.)

(Authority: 20 U.S.C. 1060–1063)

[58 FR 38713, July 20, 1993, as amended at 79 FR 76101, Dec. 19, 2014]

Subpart B—What Kind of Projects Does the Secretary Fund?

§ 608.10 What activities may be carried out under a grant?

(a) *Allowable activities.* Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

(3) Support of faculty exchanges, faculty development and faculty fellowships to assist these faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational materials, including telecommunications program materials;

(6) Tutoring, counseling, and student service programs designed to improve academic success;

(7) Funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(8) Joint use of facilities, such as laboratories and libraries;

(9) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector;

(10) Establishing or enhancing a program of teacher education designed to qualify students to teach in a public elementary or secondary school in the State that shall include, as part of the program, preparation for teacher certification;

(11) Establishing community outreach programs that will encourage elementary and secondary students to develop the academic skills and the interest to pursue postsecondary education; and

(12) Other activities that it proposes in its application that contribute to carrying out the purpose of this part and are approved by the Secretary as part of the review and acceptance of the application.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities described in paragraph (a)(12) of this section that are not approved by the Secretary;

(3) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(4) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(5) Activities or services that relate to sectarian instruction or religious worship; and

(6) Activities provided by a school or department of divinity. For the purpose of this section, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(c) No award under this part may be used for telecommunications technology equipment, facilities or services, if such equipment, facilities or services are available pursuant to section 396(k) of the Communications Act of 1934.

(d) *Endowment funds.* If a grantee uses part of its grant funds to establish or increase an endowment fund, it is subject to the provisions of §§ 628.3, 628.6, 628.10 and 628.41 through 628.47 of this chapter with regard to the use of those funds, except—

(1) The definition of the term ''endowment fund income'' in § 628.6 of this chapter does not apply. For the purposes of this paragraph (d), ''endowment fund income'' means an amount equal to the total value of the fund, including fund appreciation and retained interest and dividends, minus the endowment fund corpus;

(2) Instead of the requirement in § 628.10(a) of this chapter, the grantee

institution must match each dollar of Federal grant funds used to establish or increase an endowment fund with one dollar of non-Federal funds; and

(3) Instead of the requirements in § 628.41(a)(3) through (a)(5) and the introductory text in § 628.41(b) and § 628.41(b)(2) and (b)(3) of this chapter, if a grantee institution decides to use any of its grant funds for endowment purposes, it must match those grant funds immediately with non-Federal funds when it places those funds into its endowment fund.

(Authority: 20 U.S.C. 1062, 1063a, and 1069c)

[58 FR 38713, July 20, 1993, as amended at 65 FR 79311, Dec. 19, 2000]

§ 608.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 608.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds;

(b) A description of how the grant funds will be used so that they will supplement and, to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds;

(c) (1) A comprehensive development plan as described in § 608.21; or

(2) If an applicant has already submitted a comprehensive development plan as described in § 608.21, a description of the progress the applicant has made in carrying out the goals of its plan;

(d) An assurance that the institution will provide the Secretary with an annual report on the activities carried out under the grant;

(e) An assurance that the institution will provide for, and submit to the Secretary, the compliance and financial audit described in § 608.41;

(f) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution;

(g) The number of graduates of the applicant institution during the school year immediately preceding the fiscal year for which grant funds are requested; and

(h) The number of graduates of the applicant institution—

(1) Who, within five years of graduating with baccalaureate degrees, attended graduate or professional schools and enrolled in degree programs in disciplines in which Blacks are underrepresented during the school year immediately preceding the fiscal year for which funds are requested; and

(2) Who graduated with baccalaureate degrees during any one of the five school years immediately preceding the school year described in paragraph (h)(1) of this section.

(Approved by the Office of Management and Budget under control number 1840–0113)

(Authority: 20 U.S.C. 1063, 1063a and 1066(b)(2))

§ 608.21 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan must describe an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Financial management;

(2) Academic programs; and

(b) The comprehensive development plan must include the following:

(1) An assessment of the strengths and weaknesses of the institution's financial management and academic programs.

(2) A delineation of the institution's goals for its financial management and academic programs, based on the outcomes of the assessment described in paragraph (b)(1) of this section.

(3) A listing of measurable objectives designed to assist the institution to reach each goal with accompanying

timeframes for achieving the objectives.

(4) A description of methods, processes, and procedures that will be used by the college or university to institutionalize financial management and academic program practices and improvements developed under the proposed funded activities.

(Approved by the Office of Management and Budget under control number 1840–0113)

(Authority: 20 U.S.C. 1063a)

Subpart D—How Does the Secretary Make a Grant?

§ 608.30 What is the procedure for approving and disapproving grant applications?

The Secretary—

(a) Approves any application that satisfies the requirements of § 608.10 and § 608.20; and

(b) Does not disapprove any application, or any modification of an application, without affording the applicant reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1063a)

§ 608.31 How does the Secretary determine the amount of a grant?

(a) Except as provided in paragraph (c) of this section, for each fiscal year, the Secretary determines the amount of a grant under this part by-

(1) Multiplying fifty percent of the amount appropriated for the HBCU Program by the following fraction:

$$\frac{\text{Number of Pell Grant recipients at the applicant institution during the school year immediately preceding that fiscal year.}}{\text{Number of Pell Grant recipients at all applicant institutions during the school year immediately preceding that fiscal year.}}$$

(2) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction:

$$\frac{\text{Number of graduates of the applicant institution during the school year immediately preceding that fiscal year.}}{\text{Number of graduates of all applicant institutions during the school year immediately preceding that fiscal year.}}$$

(3) Multiplying twenty-five percent of the amount appropriated for the HBCU Program by the following fraction:

$$\frac{\text{The percentage of graduates of an applicant institution who, within five years of graduating with baccalaureate degrees, are in attendance at graduate or professional schools and enrolled in degree programs in disciplines in which Blacks are underrepresented}}{\text{The sum of the percentages of those graduates of all applicant institutions.}}$$

(4) Adding the amounts obtained in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(b)(1) For each fiscal year, the numerator in paragraph (a)(3) of this section is calculated by—

(i) Determining the number of graduates of an applicant institution who, within five years of graduating with baccalaureate degrees, attended graduate or professional schools and enrolled in degree programs in disciplines in which Blacks are underrepresented during the school year immediately preceding that fiscal year; and

(ii) Dividing the number obtained in paragraph (b)(1)(i) of this section by the number of graduates of an applicant institution who graduated with baccalaureate degrees during the five school years immediately preceding the school year described in paragraph (b)(1)(i) of this section.

(2) For purposes of this section, the Secretary—

(i) Considers that Blacks are underrepresented in a professional or academic discipline if the percentage of Blacks in that discipline is less than the percentage of Blacks in the general population of the United States; and

(ii) Notifies applicants of the disciplines in which Blacks are underrepresented through a notice in the FEDERAL REGISTER, after consulting with the Commissioner of the Bureau of Labor Statistics.

(c) Notwithstanding the formula in paragraph (a) of this section—

(1) For each fiscal year, each eligible institution with an approved application must receive at least $500,000; and

(2) If the amount appropriated for a fiscal year for the HBCU Program is insufficient to provide $500,000 to each eligible institution with an approved application, each grant is ratably reduced. If additional funds become available for the HBCU Program during a fiscal year, each grant is increased on the same basis as it was decreased until the grant amount reaches $500,000.

(d) The amount of any grant that the Secretary determines will not be required by a grantee for the period for which the grant was made is available for reallotment by the Secretary during that period to other eligible institutions under the formula contained in paragraph (a) of this section.

(Authority: 20 U.S.C. 1063)

Subpart E—What Conditions Must a Grantee Meet?

§ 608.40 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraphs (b) and (c) of this section, a grantee may expend grant funds for activities that are related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* Grant funds shall be used so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility; or

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062 and 1066)

§ 608.41 What are the audit and repayment requirements?

(a) (1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part of a qualified, independent organization or person in accordance with the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions,* 1981 revision, established by the Comptroller General of the United States. This publication is available from the Superintendent of Documents, U.S. Government Printing Office.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under Chapter 75 of Title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Department of Education Inspector General three copies of the audit required in paragraph (a) of this section within six months after completion of the audit.

(c) Any individual or firm conducting an audit described in this section shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a and 1063c)

§ 608.42 Under what conditions does the Secretary terminate a grant?

The Secretary terminates any grant under which funds were not expended if an institution loses—

(a) Its accredited status; or

(b) Its legal authority in the State in which it is located—

(1) To be a junior or community college; or

(2) To provide an educational program for which it awards a bachelor's degree.

(Authority: 20 U.S.C. 1063a)

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

Subpart A—General

Sec.
609.1 What is the Strengthening Historically Black Graduate Institutions Program?
609.2 What institutions are eligible to receive a grant under this part?
609.3 What regulations apply?
609.4 What definitions apply?

Subpart B—What Kind of Project Does the Secretary Fund?

609.10 What activities may be carried out under a grant?
609.11 What is the duration of a grant?

Subpart C—How Does an Eligible Institution Apply for a Grant?

609.20 What are the application requirements for a grant under this part?
609.21 What is a comprehensive development plan and what must it contain?

Subpart D—How Does the Secretary Make a Grant?

609.30 What is the procedure for approving and disapproving grant applications?
609.31 How does the Secretary determine the amount of a grant?

Subpart E—What Conditions Must a Grantee Meet?

609.40 What are the matching requirements?
609.41 What are allowable costs and what are the limitations on allowable costs?
609.42 What are the audit and repayment requirements?
609.43 Under what conditions does the Secretary terminate a grant?

AUTHORITY: 20 U.S.C. 1063b and 1063c, unless otherwise noted.

SOURCE: 59 FR 38717, July 20, 1993, unless otherwise noted.

Subpart A—General

§ 609.1 What is the Strengthening Historically Black Graduate Institutions Program?

The Strengthening Historically Black Graduate Institutions Program provides grants to the institutions listed in § 609.2 to assist these institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

(Authority: 20 U.S.C. 1060 and 1063b)

§ 609.2 What institutions are eligible to receive a grant under this part?

(a) An institution or an institution's qualified graduate program listed in paragraph (b) of this section is eligible to receive a grant under this part if the Secretary determines that the institution is making a substantial contribution to legal, medical, dental, veterinary or other graduate education opportunities for Black Americans.

(b) The institutions and programs referred to in paragraph (a) of this section are—

(1) Morehouse School of Medicine;

(2) Meharry Medical School;

(3) Charles R. Drew Postgraduate Medical School;

(4) Clark Atlanta University;

(5) Tuskegee Institute School of Veterinary Medicine;

(6) Xavier University School of Pharmacy;

(7) Southern University School of Law;

(8) Texas Southern University School of Law and School of Pharmacy;

(9) Florida A&M University School of Pharmaceutical Sciences;

(10) North Carolina Central University School of Law;

(11) Morgan State University's qualified graduate program;

(12) Hampton University's qualified graduate program;

(13) Alabama A&M's qualified graduate program;

(14) North Carolina A&T State University's qualified graduate program;

(15) University of Maryland Eastern Shore's qualified graduate program; and

(16) Jackson State University's qualified graduate program.

(c) An institution that was awarded a grant prior to October 1, 1992 may continue to receive grant payments, regardless of the eligibility of the graduate institutions described in paragraphs (b)(6) through (16) of this section, until the institution's grant period has expired or September 30, 1993, whichever is later.

(d) No institution of higher education or university system may receive more than one grant under this section in any fiscal year.

(Authority: 20 U.S.C. 1063b(e))

§ 609.3 What regulations apply?

The following regulations apply to this part:

(a) The Department of Education General Administrative Regulations (EDGAR) as follows:

(1) [Reserved]

(2) The following sections of 34 CFR part 75 (Direct Grant Programs): §§ 75.1–75.104, 75.125–75.129, 75.190–75.192, 75.230–75.261, 75.500, 75.510–75.519, 75.524–75.534, 75.580–75.903, and 75.901;

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) [Reserved]

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 609.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1063b)

[59 FR 38717, July 20, 1993, as amended at 79 FR 76101, Dec. 19, 2014]

§ 609.4 What definitions apply?

(a) *General definitions*. The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

Applicant	Award
Application	Budget
EDGAR	Private
Equipment	Project period
Fiscal year	Public
Grant period	Secretary

(b) The following definition applies to a term used in this part:

Qualified graduate program means a graduate or professional program that—

(i) Provides a program of instruction in the physical or natural sciences, engineering, mathematics, or other scientific disciplines in which African Americans are underrepresented;

(ii) Has been accredited or approved by a nationally recognized accrediting agency or association. (The Secretary publishes a list in the FEDERAL REGISTER of nationally recognized accrediting agencies and associations.); and

(iii) Has students enrolled in that program when the institution offering the program applies for a grant under this part.

(Authority: 20 U.S.C. 1063b and 1069c)

[59 FR 38717, July 20, 1993, as amended at 79 FR 76101, Dec. 19, 2014]

Subpart B—What Kind of Projects Does the Secretary Fund?

§ 609.10 What activities may be carried out under a grant?

(a) *Allowable activities*. Except as provided in paragraph (b) of this section, a grantee may carry out the following activities under this part—

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional or research purposes;

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

(3) Support of faculty exchanges, faculty development and faculty fellowships to assist these faculty members in attaining advanced degrees in their fields of instruction;

(4) Academic instruction in disciplines in which Black Americans are underrepresented;

(5) Purchase of library books, periodicals, microfilm, and other educational

materials, including telecommunications program materials;

(6) Tutoring, counseling, and student service programs designed to improve academic success;

(7) Funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(8) Joint use of facilities, such as laboratories and libraries;

(9) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector;

(10) Establishing or enhancing a program of teacher education designed to qualify students to teach in a public elementary or secondary school in the State that shall include, as part of such program preparation for teacher certification;

(11) Establishing community outreach programs that will encourage elementary and secondary students to develop the academic skills and the interest to pursue postsecondary education;

(12) Other activities that it proposes in its application that contribute to carrying out the purpose of this part and are approved by the Secretary;

(13) Establishing or improving a development office to strengthen and increase contributions from alumni and the private sector; and

(14) Establishing and maintaining an institutional endowment under 34 CFR part 628 to facilitate financial independence.

(b) *Unallowable activities.* A grantee may not carry out the following activities under this part—

(1) Activities that are not included in the grantee's approved application;

(2) Activities described in paragraph (a)(12) of this section that are not approved by the Secretary;

(3) Activities that are inconsistent with any State plan of higher education that is applicable to the institution;

(4) Activities that are inconsistent with a State plan for desegregation of higher education that is applicable to the institution;

(5) Activities or services that relate to sectarian instruction or religious worship; and

(6) Activities provided by a school or department of divinity. For the purpose of this section, a ''school or department of divinity'' means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(c) No award under this part may be used for telecommunications technology equipment, facilities or services, if such equipment, facilities or services are available pursuant to section 396(k) of the Communications Act of 1934.

(Authority: 20 U.S.C. 1062, 1063a, and 1069c)

§ 609.11 What is the duration of a grant?

The Secretary may award a grant under this part for a period of up to five academic years.

(Authority: 20 U.S.C. 1063b(b))

Subpart C—How Does an Eligible Institution Apply for a Grant?

§ 609.20 What are the application requirements for a grant under this part?

In order to receive a grant under this part, an institution must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain—

(a) A description of the activities to be carried out with grant funds and how those activities will improve graduate educational opportunities for Black and low-income students and lead to greater financial independence for the applicant;

(b) A description of how the applicant is making a substantial contribution to the legal, medical, dental, veterinary or other graduate education opportunities for Black Americans;

(c) An assurance from each applicant requesting in excess of $500,000 that 50 percent of the costs of all the activities to be carried out under the grant will come from non-Federal sources;

(d) A description of how the grant funds will be used so that they will

supplement, and to the extent practical, increase the funds that would otherwise be made available for the activities to be carried out under the grant and in no case supplant those funds, for the activities described in § 609.10(a)(1) through § 609.10(a)(14);

(e) An assurance that the proposed activities in the application are in accordance with any State plan that is applicable to the institution; and

(f)(1) A comprehensive development plan as described in § 609.21; or

(2) If an applicant has already submitted a comprehensive development plan as described in § 609.21, a description of the progress the applicant has made in carrying out the goals of its plan.

(Approved by the Office of Management and Budget under control number 1840–0113)

(Authority: 20 U.S.C. 1063d and 1066(b)(2))

§ 609.21 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan must describe an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Financial management;

(2) Academic programs; and

(b) The comprehensive development plan must include the following:

(1) An assessment of the strengths and weaknesses of the institution's financial management and academic programs.

(2) A delineation of the institution's goals for its financial management and academic programs, based on the outcomes of the assessment described in paragraph (b)(1) of this section.

(3) A listing of measurable objectives designed to assist the institution to reach each goal with accompanying timeframes for achieving the objectives.

(4) A description of methods, processes and procedures that will be used by the college or university to institutionalize financial management and academic program practices and improvements developed under the proposed funded activities.

(Approved by the Office of Management and Budget under control number 1840–0113)

(Authority: 20 U.S.C. 1063a)

Subpart D—How Does the Secretary Make a Grant?

§ 609.30 What is the procedure for approving and disapproving grant applications?

The Secretary approves any application that satisfies the requirements of §§ 609.10 and 609.20.

(Authority: 20 U.S.C. 1063a)

§ 609.31 How does the Secretary determine the amount of a grant?

Of the amount appropriated for any fiscal year—

(a)(1) The first $12,000,000 (or any lesser amount appropriated) shall be available only for the purpose of making grants to institutions or programs described in § 609.2(b)(1) through § 609.2(b)(5);

(2) If the sum of the approved applications does not exceed the amount appropriated, the Secretary awards grants in the amounts requested and approved;

(3) If the sum of the approved requests exceeds the sum appropriated, and Morehouse School of Medicine submits an approved request for at least $3,000,000, and the amount appropriated exceeds $3,000,000, the Secretary awards no less than $3,000,000 to Morehouse School of Medicine and reduces the grants to the institutions described in § 609.2(b)(1) through § 609.2(b)(5) as the Secretary considers appropriate, so that the sum of the approved grants equals the amount appropriated; and

(4) If Morehouse School of Medicine submits an approved request for at least $3,000,000 and the amount appropriated does not exceed $3,000,000, Morehouse School of Medicine receives all the appropriated funds; and

(b)(1) Any amount appropriated in excess of $12,000,000 shall be available for the purpose of making grants, in equal amounts not to exceed $500,000, to institutions or programs described in § 609.2(b)(6) through § 609.2(b)(16); and

(2) If any funds remain, the Secretary makes grants to institutions or programs described in § 609.2(b)(1) through § 609.2(b)(16).

(Authority: 20 U.S.C. 1063b)

Subpart E—What Conditions Must a Grantee Meet?

§ 609.40 What are the matching requirements?

If an institution receives a grant in excess of $500,000, it must spend non-Federal funds to meet the cost of at least 50 percent of the activities approved in its application.

(Authority: 20 U.S.C. 1063b)

§ 609.41 What are allowable costs and what are the limitations on allowable costs?

(a) *Allowable costs.* Except as provided in paragraphs (b) and (c) of this section, a grantee may expend grant funds for activities that are reasonably related to carrying out the allowable activities included in its approved application.

(b) *Supplement and not supplant.* A grantee shall use grant funds so that they supplement, and to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant, and in no case supplant those funds.

(c) *Limitations on allowable costs.* A grantee may not—

(1) Spend more than fifty percent of its grant award in each fiscal year for costs relating to constructing or maintaining a classroom, library, laboratory, or other instructional facility; and

(2) Use an indirect cost rate to determine allowable costs under its grant.

(Authority: 20 U.S.C. 1062, 1063b, and 1066)

§ 609.42 What are the audit and repayment requirements?

(a)(1) A grantee shall provide for the conduct of a compliance and financial audit of any funds it receives under this part by a qualified, independent organization or person in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, 1981 revision, established by the Comptroller General of the United States. This publication is available from the Superintendent of Documents, U.S. Government Printing Office.

(2) The grantee shall have an audit conducted at least once every two years, covering the period since the previous audit, and the grantee shall submit the audit to the Secretary.

(3) If a grantee is audited under chapter 75 of title 31 of the United States Code, the Secretary considers that audit to satisfy the requirements of paragraph (a)(1) of this section.

(b) An institution awarded a grant under this part must submit to the Department of Education Inspector General three copies of the audit required in paragraph (a) of this section within six months after completion of the audit.

(c) Any individual or firm conducting an audit described in this section shall give the Department of Education's Inspector General access to records or other documents necessary to review the results of the audit.

(d) A grantee shall repay to the Treasury of the United States any grant funds it received that it did not expend or use to carry out the allowable activities included in its approved application within ten years following the date of the initial grant it received under this part.

(Authority: 20 U.S.C. 1063a)

§ 609.43 Under what conditions does the Secretary terminate a grant?

The Secretary terminates any grant under which funds were not expended if an institution loses—

(a) Its accredited status; or

(b) Its legal authority in the State in which it is located.

(Authority: 20 U.S.C. 1063a)

PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM

Subpart A—General

Sec.

628.1 What are the purposes of the Endowment Challenge Grant Program?
628.2 Which institutions are eligible to apply for an endowment challenge grant?
628.3 Under what conditions may an eligible institution designate a foundation as the recipient of an endowment challenge grant?
628.4 What time limitations are placed on grantees applying for another grant?

628.5 What regulations apply to the Endowment Challenge Grant Program?
628.6 What definitions apply to the Endowment Challenge Grant Program?

Subpart B—What Type of Grant Does the Secretary Award Under the Endowment Challenge Grant Program?

628.10 What are the characteristics of an endowment challenge grant?

Subpart C—How Does an Eligible Institution Apply for an Endowment Challenge Grant?

628.20 What shall an applicant include in an application for an endowment challenge grant?

Subpart D—How Does the Secretary Award an Endowment Challenge Grant?

628.30 How does the Secretary evaluate an application for an endowment challenge grant?
628.31 What selection criteria does the Secretary use in evaluating an application for an endowment challenge grant?
628.32 What funding priorities does the Secretary use in evaluating an application for an endowment challenge grant?

Subpart E—What Conditions Must a Grantee Meet Under the Endowment Challenge Grant Program?

628.40 What are the restrictions on the amount of an endowment challenge grant?
628.41 What are the obligations of an institution that the Secretary selects to receive an endowment challenge grant?
628.42 What may a grantee not use to match an endowment challenge grant?
628.43 What investment standards shall a grantee follow?
628.44 When and for what purpose may a grantee use the endowment fund corpus?
628.45 How much endowment fund income may a grantee use and for what purposes?
628.46 How shall a grantee calculate the amount of endowment fund income that it may withdraw and spend?
628.47 What shall a grantee record and report?
628.48 What happens if a grantee fails to administer the endowment challenge grant in accordance with applicable regulations?

AUTHORITY: 20 U.S.C. 1065, unless otherwise noted.

SOURCE: 49 FR 28521, July 21, 1984, unless otherwise noted.

Subpart A—General

§ 628.1 What are the purposes of the Endowment Challenge Grant Program?

The Endowment Challenge Grant Program provides endowment challenge grants, which must be matched, to eligible institutions to—

(a) Establish or increase endowment challenge funds;

(b) Provide additional incentives to promote fund-raising activities; and

(c) Foster increased independence and self-sufficiency at those institutions.

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 58 FR 11163, Feb. 23, 1993]

§ 628.2 Which institutions are eligible to apply for an endowment challenge grant?

An institution is eligible to apply for an endowment challenge grant if—

(a) It qualifies as an eligible institution for the Strengthening Institutions Program under 34 CFR 607.2;

(b) It qualifies as an eligible institution for the Strengthening Historically Black Colleges and Universities Program under 34 CFR 608.2;

(c) It would have qualified as an eligible institution for the Strengthening Institutions Program if 34 CFR 607.2(a)(3) referred to a postgraduate degree rather than a bachelor's degree;

(d) It would have qualified as an eligible institution for the Strengthening Historically Black Colleges and Universities Program if 34 CFR 608.2(a)(4)(i) referred to a postgraduate degree rather than a bachelor's degree; or

(e) It qualifies as an institution that makes a substantial contribution to graduate or postgraduate medical educational opportunities for minorities and the economically disadvantaged.

(Authority: 20 U.S.C. 1065)

[52 FR 36374, Sept. 28, 1987, as amended at 58 FR 11163, Feb. 23, 1993]

§ 628.3 Under what conditions may an eligible institution designate a foundation as the recipient of an endowment challenge grant?

An eligible institution may designate a foundation, which was established for the purpose of raising money for that institution, as the recipient of an endowment challenge grant if—

(a) The institution assures the Secretary in its application that the foundation is legally authorized to receive the endowment fund corpus and to administer the endowment fund in accordance with the regulations in this part;

(b) The foundation agrees to administer the endowment fund in accordance with the regulations in this part; and

(c) The institution agrees to be liable for any violation by the foundation of any applicable regulation, including any violation resulting in monetary liability.

(Authority: 20 U.S.C. 1065)

§ 628.4 What time limitations are placed on grantees applying for another grant?

(a) Except as provided in paragraphs (b) and (c) of this section, an institution that has received a grant under this part may apply for another grant under this part only after 10 fiscal years have elapsed following the fiscal year appropriation from which the institution's grant was awarded (base fiscal year).

(b) An institution that has received a grant under this part may apply for another grant under this part after five fiscal years have elapsed following the base fiscal year if the appropriation for this part exceeds $20 million in any of those five fiscal years.

(c) If an institution has received a grant under this part and the appropriation for this part exceeds $20 million in any of the sixth through tenth fiscal years following the base fiscal year, the institution may apply for another grant under this part in the fiscal year in which the appropriation exceeds $20 million, or any subsequent fiscal year.

(Authority: 20 U.S.C. 1065)

[58 FR 11163, Feb. 23, 1993]

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

(a) The following regulations apply to the Endowment Challenge Grant Program:

(1) The regulations in this part 628.

(2)–(3) [Reserved]

(b)(1) The Education Department General Administrative Regulations (EDGAR) as follows:

(i)–(ii) [Reserved]

(iii) The regulations in 34 CFR 75.100 through 75.102, and 75.217.

(iv) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(v) 34 CFR part 82 (New Restrictions on Lobbying).

(vi) 34 CFR part 84 (Governmentwide Requirements For Drug-Free Workplace (Financial Assistance)).

(vii) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(2) Except as specifically indicated in paragraph (b)(1) and (c) of this section, the Education Department General Administrative Regulations and the regulations in 2 CFR part 200 do not apply.

(c) The following regulations in title 2 of the CFR apply to the Endowment Challenge Grant Program:

(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(2) 2 CFR 200.328 (Monitoring and reporting program performance), as adopted at 2 CFR part 3474.

(3) 2 CFR part 200, subpart F (Audit Requirements), as adopted by ED at 2 CFR part 3474.

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 52 FR 36375, Sept. 28, 1987; 58 FR 11163, Feb. 23, 1993; 79 FR 76101, Dec. 19, 2014]

§ 628.6 What definitions apply to the Endowment Challenge Grant Program?

The following definitions apply to the regulations in this part:

Endowment fund means a fund which excludes real estate and which is established by State law, by an institution, or by a foundation that is exempt from

taxation and is maintained for the purpose of generating income for the support of the institution. The principal or corpus of the fund may not be spent. ''Endowment fund'' includes ''quasi-endowment fund''.

Endowment fund corpus means an amount equal to the endowment challenge grant or grants awarded under this part plus matching funds provided by the institution.

Endowment fund income means an amount equal to the total value of the endowment fund established under the grant minus the endowment fund corpus.

Quasi-endowment fund means a fund which the governing board of an institution or foundation establishes to function as an endowment in that the principal is to be retained and invested. However, the entire principal and income may be spent at any time at the discretion of the governing board.

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 52 FR 36375, Sept. 28, 1987; 58 FR 11163, Feb. 23, 1993]

Subpart B—What Type of Grant Does the Secretary Award Under the Endowment Challenge Grant Program?

§ 628.10 What are the characteristics of an endowment challenge grant?

Each endowment challenge grant awarded by the Secretary under this part—

(a) Must be matched by the institution receiving the grant with one dollar of non-Federal funds for every two dollars of Federal grant funds;

(b) Must be invested by the institution; and

(c) Must have a duration of 20 years.

(Authority: 20 U.S.C. 1065)

[58 FR 11163, Feb. 23, 1993]

Subpart C—How Does an Eligible Institution Apply for an Endowment Challenge Grant?

§ 628.20 What shall an applicant include in an application for an endowment challenge grant?

An applicant shall include in its application the amount of the endowment challenge grant it is requesting, a description of its short-term plan and long-term plan for raising and using endowment challenge grant funds, and information sufficient for the Secretary to—

(a) Evaluate the application under the selection criteria set forth in § 628.31 and the priorities set forth in § 628.32; and

(b) Determine whether the applicant will administer the endowment challenge grant in accordance with the regulations in this part.

(Approved by the Office of Management and Budget under control number 1840–0531)

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 58 FR 11163, Feb. 23, 1993; 59 FR 46175, Sept. 7, 1994]

Subpart D—How Does the Secretary Award an Endowment Challenge Grant?

§ 628.30 How does the Secretary evaluate an application for an endowment challenge grant?

(a) In evaluating an application for an endowment challenge grant, the Secretary—

(1) Judges the application using the selection criteria in § 628.31 and the priorities in § 628.32;

(2) Gives, for each criterion and priority, a score up to the maximum possible points in parentheses following the description of that criterion or priority; and

(3) Gives up to 130 total points, 90 points maximum for the criteria in § 628.31, and 40 points maximum for the priorities in § 628.32.

(b) In selecting recipients for grants, the Secretary follows the procedures in

34 CFR 75.217(d) and (e) of the Education Department General Administrative Regulations.

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987]

§ 628.31 What selection criteria does the Secretary use in evaluating an application for an endowment challenge grant?

In evaluating an application for an endowment challenge grant, the Secretary uses the following three criteria:

(a) The Secretary measures the applicant's past efforts to build or maintain its existing endowment and quasi-endowment funds by the dollar and relative increase in market value to the applicant's existing endowment and quasi-endowment funds over the applicant's four fiscal years preceding the year of application using the formulas set forth in paragraphs (a)(1) through (a)(5) of this section.

(1) In measuring an applicant's dollar increase in its endowment and quasi-endowment funds, the Secretary—

(i) Subtracts from an amount equal to the market value of the applicant's endowment and quasi-endowment funds at the end of the four-year period described in paragraph (a) of this section an amount equal to the market value of the applicant's endowment and quasi-endowment funds at the beginning of that four-year period; and

(ii) Divides the result obtained in paragraph (a)(1)(i) of this section by the applicant's full-time equivalent enrollment at the end of the four-year period.

(2) The Secretary awards points on a sliding scale giving 10 points to applicants with the highest dollar increase as calculated in paragraph (a)(1) of this section and no points to applicants with the lowest dollar increase.

(3) In measuring an applicant's relative increase in market value of its endowment and quasi-endowment funds, the Secretary—

(i) Divides an amount equal to the market value of the applicant's endowment and quasi-endowment funds at the beginning of the four-year period described in paragraph (a) of this section by the applicant's full-time equivalent enrollment at the end of the four-year period.

(ii) Adds $50 to the amount obtained in paragraph (a)(3)(i) of this section.

(iii) Divides the result obtained in paragraph (a)(1)(ii) of this section by the amount obtained in paragraph (a)(3)(ii) of this section.

(4)(i) If the amount of endowment per full-time equivalent student under paragraph (a)(3)(i) of this section is $50 or more, the Secretary awards points on a sliding scale giving 15 points to applicants with a relative increase of 100 percent or more and no points to applicants that have had a relative decrease of more than 20 percent.

(ii) If the amount of endowment per full-time equivalent student under paragraph (a)(3)(i) of this section is less than $50, the Secretary awards points on a sliding scale giving 15 points to applicants with a relative increase of 100 percent or more and no points to applicants that have had no relative increase.

(5) In measuring the applicant's past effort, the Secretary—

(i) Excludes real estate from being considered as part of the applicant's existing endowment or quasi-endowment fund; and

(ii) Includes an endowment or quasi-endowment fund operated by a foundation if the foundation is tax-exempt and was established for the purpose of raising money for the institution.

(b) The Secretary considers the degree of proposed nongovernmental matching funds. (Total: 15 points maximum for the highest proposed percentage)

(1) The Secretary measures the degree to which an applicant proposes to match the grant with funds from sources other than a State or local government—giving up to 15 points to applicants proposing to obtain the largest percentage of matching funds from those nongovernmental sources.

(2) If an applicant is applying for an endowment challenge grant for the first time, the Secretary multiplies the maximum number of points (i.e., 15 points) on this criterion times the following fraction:

$$\frac{\text{Amount of matching funds proposed from nongovernmental sources}}{\text{Total proposed amount of matching funds}}$$

(3) If an applicant has previously received an endowment challenge grant, the Secretary uses the following formula in awarding points under this criterion:

$$\frac{\text{Amount of matching funds proposed from nongovernmental sources}}{\text{Total proposed amount of matching funds}} \times \frac{\text{Amount of matching funds from nongovernmental sources actually raised under previous endowment challenge grant}}{\text{Amount of matching funds proposed to be raised from nongovernmental sources under the previous endowment challenge grant}} \times 15 \text{ points} = \text{Points on this criterion}$$

(c) The Secretary considers the need for an endowment challenge grant as measured by the applicant's lack of resources.

(1) The Secretary gives up to 50 points to applicants with the least resources as measured, at the end of the applicant's fiscal year preceding the year it applies for an endowment challenge grant, by revenue per full-time equivalent student it receives from the sum of the following—

(i) Federal, State and local government appropriations;

(ii) Unrestricted Federal, State and local government grants and contracts;

(iii) Eighty percent of tuition and fees; and

(iv) Unrestricted and restricted ''endowment income''.

(2) In measuring the applicant's resources, the Secretary—

(i) Defines the factors in paragraphs (c)(1)(i) through (iv) as they are defined in the Education Department Higher Education General Information Survey of Financial Statistics.

(ii) Excludes real estate from being considered as part of the applicant's existing endowment or quasi-endowment fund.

(Approved by the Office of Management and Budget under control number 1840–0531)

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 12, 1984, as amended at 49 FR 37325, Sept. 21, 1984]

§ 628.32 What funding priorities does the Secretary use in evaluating an application for an endowment challenge grant?

In evaluating an endowment challenge grant application, the Secretary uses the following two priorities:

(a) *Recipient or former recipient of a grant under the Strengthening Institutions, Special Needs, Hispanic-Serving Institutions, Strengthening Historically Black Colleges and Universities, or Strengthening Historically Black Graduate Institutions Program.* (Total: 20 points) The Secretary gives 20 points to each applicant who on October 1 of the fiscal year in which the applicant is applying for an endowment challenge grant is a current recipient of a planning or development grant, or was a recipient of a planning or development grant within the five preceding fiscal years, under the Strengthening Institutions, Special Needs, Hispanic-Serving Institutions, Strengthening Historically Black Colleges and Universities, or Strengthening Historically Black Graduate Institutions Program.

(b) *Need for an endowment challenge grant as measured by the lack of endowment funds.* (Total: 20 points)

(1) The Secretary gives up to 20 total points to an applicant with the greatest need for an endowment challenge grant under this part, as measured by the applicant's lack of endowment funds.

(2) The Secretary gives up to 20 points to the applicant with the lowest market value, at the end of the applicant's fiscal year preceding the year it applies for an endowment challenge grant, of its existing endowment and quasi-endowment fund in relation to the number of full-time equivalent students enrolled at the institution in the fall of the year preceding the year it applies for an endowment challenge grant.

(3) In measuring the applicant's need for an endowment challenge grant, the Secretary excludes real estate from being considered as part of the applicant's existing endowment or quasi-endowment fund.

(Approved by the Office of Management and Budget under control number 1840–0531)

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 58 FR 11163, Feb. 23, 1993; 59 FR 46175, Sept. 7, 1994]

Subpart E—What Conditions Must a Grantee Meet Under the Endowment Challenge Grant Program?

§ 628.40 What are the restrictions on the amount of an endowment challenge grant?

(a) To receive an endowment challenge grant, an institution must raise at least $25,000 in matching funds and qualify for at least a $50,000 grant under paragraph (c) of this section.

(b) If an institution obtains at least $25,000 in matching funds and raises all the nongovernmental funds it proposed to raise in its application, the institution may receive a grant equal to twice the amount of matching funds it raises up to—

(1) $500,000 in any fiscal year in which the amount appropriated for the Endowment Challenge Grant Program is less than $15,000,000;

(2) $1,000,000 in any fiscal year in which the amount appropriated for the Endowment Challenge Grant Program equals or exceeds $15,000,000 but is less than $25,000,000; or

(3) $1,500,000 in any fiscal year in which the amount appropriated for the Endowment Challenge Grant Program equals or exceeds $25,000,000.

(c) If an institution does not raise all the nongovernmental funds it proposes to raise in its application, the Secretary reduces the institution's grant by multiplying the grant amount requested by the following fraction:

$$\frac{\text{Amount of matching funds raised from nongovernmental sources divided by}}{\text{Amount of matching funds proposed to be raised from nongovernmental sources}}$$

(Authority: 20 U.S.C. 1065)

[57 FR 11163, Feb. 23, 1993]

§ 628.41 What are the obligations of an institution that the Secretary selects to receive an endowment challenge grant?

(a) An institution that the Secretary selects to receive an endowment challenge grant shall—

(1) Enter into an agreement with the Secretary to administer the endowment challenge grant;

(2) Establish an endowment fund independent of any other endowment fund established by or for that institution;

(3) Deposit its matching funds in the endowment fund established under this part;

(4) Upon receipt, immediately deposit the grant funds into the endowment fund established under this part; and

(5) Within fifteen working days after receiving the grant funds, invest the endowment fund corpus.

(b) Before the Secretary disburses grant funds and not later than a date established by the Secretary through a notice in the FEDERAL REGISTER (which date may not be later than the earlier of the last day of availability of appropriations or eighteen months after an institution has been notified that it has been selected to receive a grant), an institution shall—

(1) Match, with cash or low-risk securities, the endowment challenge grant funds to be received under this part;

(2) Certify to the Secretary—

(i) The source, kind and amount of the eligible matching funds;

(ii) That the matching funds are eligible under paragraph (b)(1) of this section and § 628.42; and

(3) Have a certified public accountant or other licensed public accountant,

who is not an employee of the institution, certify that the data contained in the application is accurate.

(c)(1) For the purpose of paragraph (b)(1) of this section, ''cash'' may include cash on hand, certificates of deposit and money market funds; and

(2) A negotiable security, to be considered as part of the institution's match—

(i) Must be low-risk as required in § 628.43; and

(ii) Must be assessed at its market value as of the end of the trading day on the date the institution deposits the security into the endowment fund established under this part.

(Approved by the Office of Management and Budget under control number 1840–0564)

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 21, 1984, as amended at 49 FR 37325, Sept. 21, 1984; 52 FR 11258, Apr. 8, 1987; 53 FR 49146, Dec. 6, 1988]

§ 628.42 What may a grantee not use to match an endowment challenge grant?

To match an endowment challenge grant, a grantee may not use—

(a) A pledge of funds or securities;

(b) Deferred gifts such as a charitable remainder annuity trust or unitrust;

(c) Any Federal funds;

(d) Any borrowed funds; or

(e) The corpus or income of an endowment fund or quasi-endowment fund existing at the closing date established by the Secretary for submission of eligibility requests under the Endowment Challenge Grant Program. This includes the corpus or income of an endowment or quasi-endowment fund established by a foundation if the foundation is tax-exempt and was established for the purpose of raising money for the institution.

(Authority: 20 U.S.C. 1065)

§ 628.43 What investment standards shall a grantee follow?

(a) A grantee shall invest, for the duration of the grant period, the endowment fund established under this part in savings accounts or in low-risk securities in which a regulated insurance company may invest under the law of the State in which the institution is located.

(b) When investing the endowment fund, the grantee shall exercise the judgment and care, under the circumstances, that a person of prudence, discretion and intelligence would exercise in the management of his or her own financial affairs.

(c) An institution may invest its endowment fund in savings accounts permitted under paragraph (a) of this section such as—

(1) A federally insured bank savings account;

(2) A comparable interest bearing account offered by a bank; or

(3) A money market fund.

(d) An institution may invest its endowment fund in low-risk securities permitted under paragraph (a) of this section such as—

(1) Certificates of deposit;

(2) Mutual funds;

(3) Stocks; or

(4) Bonds.

(e) An institution may not invest its endowment fund in real estate.

(Authority: 20 U.S.C. 1065)

§ 628.44 When and for what purposes may a grantee use the endowment fund corpus?

(a)(1) During the grant period, a grantee may not withdraw or spend any part of the endowment fund corpus.

(2) If, during the grant period, a grantee withdraws or spends all or part of the endowment fund corpus, it must repay to the Secretary an amount equal of 50 percent of the amount withdrawn or spent plus the income earned on that amount.

(b) At the end of the grant period, the institution may use the endowment fund corpus for any educational purpose.

(Authority: 20 U.S.C. 1065)

§ 628.45 How much endowment fund income may a grantee use and for what purposes?

(a) During the endowment challenge grant period, a grantee—

(1) May withdraw and spend up to 50 percent of the total aggregate endowment fund income earned prior to the date of expenditure;

(2) May spend the endowment fund income for—

(i) Costs necessary to operate the institution, including general operating and maintenance costs;

(ii) Costs to administer and manage the endowment fund; and

(iii) Costs associated with buying and selling securities, such as stockbroker commissions and fees to ''load'' mutual funds;

(3) May not use endowment fund income for—

(i) A school or department of divinity or any religious worship or sectarian activity;

(ii) An activity that is inconsistent with a State plan for desegregation applicable to the grantee; or

(iii) An activity that is inconsistent with a State plan applicable to the grantee; and

(4) May not withdraw or spend the remaining 50 percent of the endowment fund income.

(b) Notwithstanding paragraph (a)(1) of this section, the Secretary may permit a grantee that requests to spend more than 50 percent of the total aggregate endowment fund income to do so if the grantee demonstrates that the expenditure is necessary because of—

(1) A financial emergency such as a pending insolvency or temporary liquidity problem;

(2) A situation threatening the existence of the institution such as destruction due to a natural disaster or arson; or

(3) Another unusual occurrence or demanding circumstance, such as a judgment against the institution for which the institution would be liable.

(c) If, during the grant period, a grantee spends more endowment fund income or uses it for purposes other than permitted under paragraphs (a) or (b) of this section, it shall repay to the Secretary an amount equal to 50 percent of the amount improperly spent.

(d) At the end of the grant period, the institution may use all of the endowment fund income for any educational purpose.

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 58 FR 11163, Feb. 23, 1993]

§ 628.46 How shall a grantee calculate the amount of endowment fund income that it may withdraw and spend?

A grantee shall calculate the amount of endowment fund income that it may withdraw and spend at a particular time as follows:

(a) On each date that the grantee plans a withdrawal of income, it must—

(1) Determine the value of endowment fund income by subtracting the endowment fund corpus from the current total value of the endowment fund on that date; and

(2) Calculate the amount of endowment fund income previously withdrawn from the endowment fund.

(b) If the value of endowment fund income in the endowment fund exceeds the aggregate amount of previously withdrawn endowment fund income, the grantee may withdraw and spend up to 50 percent of that excess fund income.

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987]

§ 628.47 What shall a grantee record and report?

A grantee shall—

(a) Keep records of—

(1) The source, kind and amount of matching funds;

(2) The type and amount of investments of the endowment fund;

(3) The amount of endowment fund income; and

(4) The amount and purpose of expenditures of endowment fund income;

(b) Retain each year's records for a minimum of five years after the grant period ends;

(c) Allow the Secretary access to information that the Secretary judges necessary to audit or examine the records required in paragraph (a) of this section;

(d) Carry out the audit required in 2 CFR part 200, subpart F;

(e) Comply with the reporting requirements in 2 CFR 200.512; and

(f) Submit reports on a timely basis that are requested by the Secretary.

(Approved by the Office of Management and Budget under control number 1840–0564)

(Authority: 20 U.S.C. 1065 and 1232f)

[49 FR 28521, July 12, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 53 FR 49146, Dec. 6, 1988; 58 FR 11164, Feb. 23, 1993; 79 FR 76101, Dec. 19, 2014]

§ 628.48 What happens if a grantee fails to administer the endowment challenge grant in accordance with applicable regulations?

(a) The Secretary may, after giving the grantee notice and an opportunity for a hearing, terminate an endowment challenge grant if the grantee—

(1) Withdraws or spends any part of the endowment fund corpus in violation of § 628.44(a)(1);

(2) Spends any portion of the endowment fund income not permitted to be spent in § 628.45;

(3) Fails to invest the endowment fund in accordance with the investment standards set forth in § 628.43; or

(4) Fails to meet the requirements in § 628.41.

(b) If the Secretary terminates a grant under paragraph (a) of this section, the grantee must return to the Secretary an amount equal to the sum of the original endowment challenge grant or grants plus the income earned on that sum.

(Authority: 20 U.S.C. 1065)

[49 FR 28521, July 21, 1984, as amended at 52 FR 11258, Apr. 8, 1987; 52 FR 36375, Sept. 28, 1987]

PART 637—MINORITY SCIENCE AND ENGINEERING IMPROVEMENT PROGRAM

Subpart A—General

Sec.

637.1 What is the Minority Science and Engineering Improvement Program (MSEIP)?
637.2 Who is eligible to receive a grant?
637.3 What regulations apply to the Minority Science and Engineering Improvement Program?
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637.11 What kinds of projects are supported by this program?
637.12 What are institutional projects?
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Subpart E—What Conditions Must Be Met by a Grantee?

637.41 What are the cost restrictions on design project grants?

AUTHORITY: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, 1068b, unless otherwise noted.

SOURCE: 46 FR 51204, Oct. 16, 1981, unless otherwise noted.

Subpart A—General

§ 637.1 What is the Minority Science and Engineering Improvement Program (MSEIP)?

The Minority Science and Engineering Improvement Program (MSEIP) is designed to effect long-range improvement in science and engineering education at predominantly minority institutions, and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific and technological careers.

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b, unless otherwise noted)

[65 FR 7674, Feb. 15, 2000]

§ 637.2 Who is eligible to receive a grant?

The following are eligible to receive a grant under this part:

(a) Public and private nonprofit institutions of higher education that—

(1) Award baccalaureate degrees; and

(2) Qualify as minority institutions as defined in § 637.4.

(b) Public or private nonprofit institutions of higher education that—

(1) Award associate degrees;

(2) Qualify as minority institutions as defined in § 637.4;

(3) Have a curriculum that includes science or engineering subjects; and

(4) Enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering.

(c) Nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees that—

(1) Provide a needed service to a group of minority institutions; or

(2) Provide in-service training to project directors, scientists, and engineers from minority institutions; or

(d) A consortia of organizations, that provide needed services to one or more minority institutions. The consortia membership may include—

(1) Institutions of higher education which have a curriculum in science or engineering;

(2) Institutions of higher education that have a graduate or professional program in science or engineering;

(3) Research laboratories of, or under the contract with, the Department of Energy;

(4) Private organizations that have science or engineering facilities; or

(5) Quasi-governmental entities that have a significant scientific or engineering mission.

(Authority: 20 U.S.C. 1067g)

[65 FR 7674, Feb. 15, 2000]

§ 637.3 What regulations apply to the Minority Science and Engineering Improvement Program?

The following regulations apply to the Minority Science and Engineering Improvement Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1)[Reserved]

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) [Reserved]

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 637.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b, unless otherwise noted)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43544, Nov. 12, 1987; 57 FR 54302, Nov. 18, 1992; 65 FR 7675, Feb. 15, 2000; 79 FR 76102, Dec. 19, 2014]

§ 637.4 What definitions apply to the Minority Science and Engineering Improvement Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR part 77.

Applicant	Nonprofit
Application	Private
Department	Project
EDGAR	Project period
Grants	Secretary
Grantee	

(b) *Definitions that apply to this part:*

Accredited means currently certified by a nationally recognized accrediting agency or making satisfactory progress toward achieving accreditation.

Act means the Higher Education Act of 1965, as amended.

Minority means American Indian, Alaskan Native, black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group underrepresented in science and engineering.

Minority institution means an accredited college or university whose enrollment of a single minority group or a combination of minority groups as defined in this section exceeds fifty percent of the total enrollment. The Secretary verifies this information from the data on enrollments (Higher Education General Information Surveys

HEGIS XIII) furnished by the institution to the Office for Civil Rights, Department of Education.

Science means, for the purposes of this program, the biological, engineering, mathematical, physical, behavorial and social sciences, and the history and philosophy of science; also included are interdisciplinary fields which are comprised of overlapping areas among two or more sciences.

Underrepresented in science and engineering means a minority group whose number of scientists and engineers per 10,000 population of that group is substantially below the comparable figure for scientists and engineers who are white and not of Hispanic origin.

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, 1068b)

(Authority: 20 U.S.C. 1135b–1135b–3 and 1135d–5)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43544, Nov. 12, 1987; 65 FR 7675, Feb. 15, 2000]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 637.11 What kinds of projects are supported by this program?

The Secretary awards grants under this program for all or some of the following categories of projects:

(a) Institutional projects for implementing a comprehensive science improvement plan as described in § 637.12.

(b) Design projects for developing a long-range science improvement plan as described in § 637.13.

(c) Special projects to support activities as described in § 637.14.

(d) Cooperative projects to share facilities and personnel and disseminate information as described in § 637.15.

(Authority: 20 U.S.C. 1135b–2)

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b)

§ 637.12 What are institutional projects?

(a) Institutional project grants support the implementation of a comprehensive science improvement plan, which may include any combination of activities for improving the preparation of minority students, particularly minority women, for careers in science.

(b) Activities that the Secretary may assist under an institutional project include, but are not limited to, the following:

(1) Faculty development programs; or

(2) Development of curriculum materials.

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43545, Nov. 12, 1987; 57 FR 54302, Nov. 18, 1992]

§ 637.13 What are design projects?

(a) Design project grants assist minority institutions that do not have their own appropriate resources or personnel to plan and develop long-range science improvement programs.

(b) Activities that the Secretary may assist under a design project include, but are not limited to, the following:

(1) Development of planning, management, and evaluation systems; and

(2) Improvement of institutional research or development offices.

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43545, Nov. 12, 1987]

§ 637.14 What are special projects?

There are two types of special projects grants—

(a) Special project grants for which minority institutions are eligible which support activities that—

(1) Improve quality training in science and engineering at minority institutions; or

(2) Enhance the minority institutions' general scientific research capabilities.

(b) Special project grants for which all applicants are eligible which support activities that—

(1) Provide a needed service to a group of eligible minority institutions; or

(2) Provide in-service training for project directors, scientists, and engineers from eligible minority institutions.

(c) Activities that the Secretary may assist under a special project include, but are not limited to, the following:

(1) Advanced science seminars;
(2) Science faculty workshops and conferences;
(3) Faculty training to develop specific science research or education skills;
(4) Research in science education;
(5) Programs for visiting scientists;
(6) Preparation of films or audio-visual materials in science;
(7) Development of learning experiences in science beyond those normally available to minority undergraduate students, particularly minority women;
(8) Development of pre-college enrichment activities in science; and
(9) Any other activities designed to address specific barriers to the entry of minorities, particularly minority women, into science.

(d) Minority institutions are eligible to apply for special projects of the type listed in paragraph (a) of this section. All applicants eligible for assistance under this program may apply for special projects of the type listed in paragraphs (b) and (c) of this section.

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43545, Nov. 12, 1987; 57 FR 54302, Nov. 18, 1992]

§ 637.15 What are cooperative projects?

(a) Cooperative project grants assist groups of nonprofit accredited colleges and universities to work together to conduct a science improvement project.

(b) Activities that the Secretary may fund under cooperative projects include, but are not limited to, the following:
(1) Assisting institutions in sharing facilities and personnel;
(2) Disseminating information about established programs in science and engineering;
(3) Supporting cooperative efforts to strengthen the institutions' science and engineering programs; and
(4) Carrying out a combination of any of the activities in paragraphs (c)(1)–(3) of this section.

(c) Eligible applicants for cooperative projects are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in § 637.4(b).

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b)

Subpart C—How Does One Apply for a Grant?

§ 637.21 Application procedures.

One applies for a grant under the procedures of EDGAR §§ 75.100 through 75.129.

Subpart D—How Does the Secretary Make a Grant?

§ 637.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 637.32.

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(c) The Secretary gives priority to applicants which have not previously received funding from the program and to previous grantees with a proven record of success, as well as to applications that contribute to achieving balance among funded projects with respect to:
(1) Geographic region;
(2) Academic discipline; and
(3) Project type.

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b)

[46 FR 51204, Oct. 16, 1981, as amended at 52 FR 43545, Nov. 12, 1987; 70 FR 13374, Mar. 21, 2005]

§ 637.32 What selection criteria does the Secretary use?

The Secretary evaluates applications on the basis of the criteria in this section.

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) Higher quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) Methods of coordination. (See 34 CFR 75.580)

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project.

(iv) The extent to which the applicant, as part of its nondiscriminatory emloyment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of a racial or ethnic minority group, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objective of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Identification of need for the project.* (1) The Secretary reviews each application for information that shows the identification of need for the project.

(2) The Secretary looks for information that shows—

(i) An adequate needs assessment;

(ii) An identification of specific needs in science; and

(iii) Involvement of appropriate individuals, especially science faculty, in identifying the institutional needs.

(g) *Potential institutional impact of the project.* (1) The Secretary reviews each application to determine the extent to which the proposed project gives evidence of potential for enhancing the institution's capacity for improving and maintaining quality science education for its minority students, particularly minority women.

(2) The Secretary looks for information that shows—

(i) For an institutional or cooperative project, the extent to which both the established science education program(s) and the proposed project will expand or strengthen the established program(s) in relation to the identified needs; or

(ii) For a design project, the extent to which realistic long-range science education improvement plans will be developed with the technical assistance provided under the project; or

(iii) For a special project, the extent to which it addresses needs that have not been adequately addressed by an existing institutional science program or takes a particularly new and exemplary approach that has not been taken

by any existing institutional science program.

(h) *Institutional commitment to the project.* (1) The Secretary reviews each application for information that shows that the applicant plans to continue the project activities when funding ceases.

(2) The Secretary looks for information that shows—

(i) Adequate institutional commitment to absorb any after-the-grant burden initiated by the project;

(ii) Adequate plans for continuation of project activities when funding ceases;

(iii) Clear evidence of past institutional commitment to the provision of quality science programs for its minority students; and

(iv) A local review statement signed by the chief executive officer of the institution endorsing the project and indicating how the project will accelerate the attainment of the institutional goals in science.

(i) *Expected outcomes.* (1) The Secretary reviews each application to determine the extent to which minority students, particularly minority women, will benefit from the project.

(2) The Secretary looks for information that shows—

(i) Expected outcomes likely to result in the accomplishment of the program goal;

(ii) Educational value for science students; and

(iii) Possibility of long-term benefits to minority students, faculty, or the institution.

(j) *Scientific and educational value of the proposed project.* (1) The Secretary reviews each application for information that shows its potential for contributions to science education.

(2) The Secretary looks for information that shows—

(i) The relationship of the proposed project to the present state of science education;

(ii) The use or development of effective techniques and approaches in science education; and

(iii) Potential use of some aspects of the project at other institutions.

(Approved by the Office of Management and Budget under control number 1840–0109)

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b)

[46 FR 51204, Oct. 16, 1981, as amended at 53 FR 49146, Dec. 6, 1988; 57 FR 54302, Nov. 18, 1992; 70 FR 13374, Mar. 21, 2005]

Subpart E—What Conditions Must be Met by a Grantee?

§ 637.41 What are the cost restrictions on design project grants?

For design project grants funds may not be used to pay more than fifty percent of the academic year salaries of faculty members involved in the project.

(Authority: 20 U.S.C. 1067–1067c, 1067g–1067k, 1068, and 1068b)

PART 642—TRAINING PROGRAM FOR FEDERAL TRIO PROGRAMS

Subpart A—General

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642.30 What are allowable costs?
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AUTHORITY: 20 U.S.C. 1070a–11 and 1070a–17, unless otherwise noted.

SOURCE: 47 FR 17788, Apr. 23, 1982, unless otherwise noted.

Subpart A—General

§ 642.1 What is the Training Program for Federal TRIO Programs?

The Training Program for Federal TRIO programs, referred to in these regulations as the Training program, provides Federal financial assistance to train the leadership personnel and staff employed in, or preparing for employment in, Federal TRIO program projects.

(Authority: 20 U.S.C. 1070a–17)

[75 FR 65771, Oct. 26, 2010]

§ 642.2 Who are eligible applicants?

The following are eligible to apply for a grant to carry out a Training Program project:

(a) Institutions of higher education.

(b) Public and private nonprofit agencies and organizations.

(Authority: 20 U.S.C. 1070a–17)

[47 FR 17788, Apr. 23, 1982, as amended at 58 FR 51519, Oct. 1, 1993]

§ 642.3 Who are eligible participants?

The following are eligible for training under this program:

(a) Leadership personnel and full and part-time staff members of projects funded under the Federal TRIO Programs.

(b) Individuals preparing for employment as leadership personnel or staff in projects funded under the Federal TRIO Programs.

(Authority: 20 U.S.C. 1070a–17)

[47 FR 17788, Apr. 23, 1982, as amended at 58 FR 51519, Oct. 1, 1993; 75 FR 65771, Oct. 26, 2010]

§ 642.4 How long is a project period?

A project period under the Training program is two years.

(Authority: 20 U.S.C. 1070a–11(b))

[75 FR 65771, Oct. 26, 2010]

§ 642.5 What regulations apply?

The following regulations apply to the Training Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

(b) The regulations in this part 642.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1070a–11 and 1070–17)

[47 FR 17788, Apr. 23, 1982, as amended at 58 FR 51519, Oct. 1, 1993. Redesignated and amended at 75 FR 65771, Oct. 26, 2010; 79 FR 76102, Dec. 19, 2014]

§ 642.6 What definitions apply?

(a) *General definitions.* The following terms are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

Applicant	Grantee
Application	Nonprofit
Award	Private
Budget	Project
EDGAR	Project period
Equipment	Public
Facilities	Secretary
Fiscal year	State
Grant	Supplies

(b) *Definitions that apply to this part.*

Act means the Higher Education Act of 1965, as amended.

Federal TRIO programs means those programs authorized under section 402A of the Act: the Upward Bound, Talent Search, Student Support Services, Educational Opportunity Centers, and Ronald E. McNair Postbaccalaureate Achievement programs.

Foster care youth means youth who are in foster care or who are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

Leadership personnel means project directors, coordinators, and other individuals involved with the supervision and direction of projects funded under the Federal TRIO programs.

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

(Authority: 20 U.S.C. 1001 *et seq.*, 1070a–11, 1070(b), 1088, and 1141)

[47 FR 17788, Apr. 23, 1982, as amended at 54 FR 7737, Feb. 22, 1989; 57 FR 9005, Mar. 13, 1992; 58 FR 51519, Oct. 1, 1993; 75 FR 65771, Oct. 26, 2010; 79 FR 76102, Dec. 19, 2014]

§ 642.7 How many applications may an eligible applicant submit?

An applicant may submit more than one application for Training grants as long as each application describes a project that addresses a different absolute priority from § 642.24 that is designated in the FEDERAL REGISTER notice inviting applications.

(Authority: 20 U.S.C. 1221e–3)

[75 FR 65771, Oct. 26, 2010]

Subpart B—What Types of Projects and Activities Does the Secretary Assist Under This Program?

SOURCE: 75 FR 65771, Oct. 26, 2010, unless otherwise noted.

§ 642.10 What types of projects does the Secretary assist?

The Secretary assists projects that train the leadership personnel and staff of projects funded under the Federal TRIO Programs to enable them to operate those projects more effectively.

(Authority: 20 U.S.C. 1070a–17)

§ 642.11 What activities does the Secretary assist?

(a) Each year, one or more Training Program projects must provide training for new project directors.

(b) Each year, one or more Training Program projects must offer training covering the following topics:

(1) The legislative and regulatory requirements for operating projects funded under the Federal TRIO programs.

(2) Assisting students to receive adequate financial aid from programs assisted under title IV of the Act and from other programs.

(3) The design and operation of model programs for projects funded under the Federal TRIO programs.

(4) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

(5) Strategies for recruiting and serving hard-to-reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(Authority: 20 U.S.C. 1070a–17)

§ 642.12 What activities may a project conduct?

A Training program project may include on-site training, on-line training, conferences, internships, seminars, workshops, and the publication of

manuals designed to improve the operations of Federal TRIO program projects.

(Authority: 20 U.S.C. 1070a–17(b))

Subpart C—How Does the Secretary Make a Grant?

SOURCE: Redesignated at 75 FR 65772, Oct. 26, 2010, unless otherwise noted.

§ 642.20 How does the Secretary evaluate an application for a new award?

(a) The Secretary evaluates an application on the basis of the criteria in § 642.21.

(1) The Secretary awards up to 75 points for these criteria.

(2) The maximum possible score for each complete criterion is indicated in the parentheses next to the heading of that criterion.

(b) In addition, for an applicant who is conducting a Training program in the fiscal year immediately prior to the fiscal year for which the applicant is applying, the Secretary evaluates the applicant's prior experience (PE) of high quality service delivery, as provided in § 642.22, based on the applicant's performance during the first project year of that expiring Training program grant.

(c) The Secretary selects applications for funding within each specific absolute priority established for the competition in rank order on the basis of the score received by the application in the peer review process.

(d) Within each specific absolute priority, if there are insufficient funds to fund all applications at the next peer review score, the Secretary adds the PE points awarded under § 642.22 to the peer review score to determine an adjusted total score for those applications. The Secretary makes awards at the next peer review score to the applications that have the highest total adjusted score.

(e) In the event a tie score still exists, the Secretary will select for funding the applicant that has the greatest capacity to provide training to eligible participants in all regions of the Nation, consistent with § 642.23.

(Authority: 20 U.S.C. 1070d, 1070d-1d)

[47 FR 17788, Apr. 23, 1982.Redesignated and amended at 75 FR 65772, Oct. 26, 2010]

§ 642.21 What selection criteria does the Secretary use?

The Secretary uses the criteria in paragraphs (a) through (f) of this section to evaluate applications:

(a) *Plan of operation.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points) (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory

employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (15 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under control number 1840—NEW1)

(Authority: 20 U.S.C. 1070a–11 and 1070a–17)

[47 FR 17788, Apr. 23, 1982, as amended at 58 FR 51519, Oct. 1, 1993. Redesignated and amended at 75 FR 65772, Oct. 26, 2010]

EFFECTIVE DATE NOTE: At 58 FR 51519, Oct. 1, 1993, § 642.31(f)(2)(i) was amended by removing ''Special Programs'' and adding ''Federal TRIO Programs'' in their place, and (f)(2)(iii) was revised. These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 642.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 642.20(b), the Secretary—

(1) Evaluates the applicant's performance under its expiring Training program grant;

(2) To determine the number of PE points to be awarded, uses the approved project objectives for the applicant's expiring Training program grant and the information the applicant submitted in its annual performance report (APR); and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicate the APR data used to calculate PE are incorrect.

(b)(1) The Secretary may add from 1 to 15 points to the point score obtained on the basis of the selection criteria in § 642.21, based on the applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (e) of this section.

(2) The maximum possible score for each criterion is indicated in the parentheses preceding the criterion.

(c) The Secretary awards no PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(d) For the criterion specified in paragraph (e)(1) of this section (Number of participants), the Secretary awards no PE points if the applicant did not serve at least the approved number of participants.

(e) The Secretary evaluates the applicant's PE on the basis of the following criteria:

(1) (4 points) *Number of participants*. Whether the applicant provided training to no less than the approved number of participants.

(2) *Training objectives*. Whether the applicant met or exceeded its objectives for:

(i) (4 points) Assisting the participants in developing increased qualifications and skills to meet the needs of disadvantaged students.

(ii) (4 points) Providing the participants with an increased knowledge and understanding of the Federal TRIO programs.

(3) (3 points) *Administrative requirements*. Whether the applicant met all the administrative requirements under the terms of the expiring grant, including recordkeeping, reporting, and financial accountability.

(Approved by the Office of Management and Budget under control number 1894–0003)

(Authority: 20 U.S.C. 1070a–11)

[Redesignated and amended at 75 FR 65772, Oct. 26, 2010]

§ 642.23 How does the Secretary ensure geographic distribution of awards?

The Secretary, to the greatest extent possible, awards grants for Training Program projects that will be carried out in all of the regions of the Nation in order to assure accessibility to prospective training participants.

(Authority: 20 U.S.C. 1070a–17)

[Redesignated at 75 FR 65772, Oct. 26, 2010]

§ 642.24 What are the Secretary's priorities for funding?

(a) The Secretary, after consultation with regional and State professional associations of persons having special knowledge with respect to the training of Special Programs personnel, may select one or more of the following subjects as training priorities:

(1) Basic skills instruction in reading, mathematics, written and oral communication, and study skills.

(2) Counseling.

(3) Assessment of student needs.

(4) Academic tests and testing.

(5) College and university admissions policies and procedures.

(6) Cultural enrichment programs.

(7) Career planning.

(8) Tutorial programs.

(9) Retention and graduation strategies.

(10) Strategies for preparing students for doctoral studies.

(11) Project evaluation.

(12) Budget management.

(13) Personnel management.

(14) Reporting student and project performance.

(15) Coordinating project activities with other available resources and activities.

(16) General project management for new directors.

(17) Statutory and regulatory requirements for the operation of projects funded under the Federal TRIO programs.

(18) Assisting students in receiving adequate financial aid from programs assisted under title IV of the Act and from other programs.

(19) The design and operation of model programs for projects funded under the Federal TRIO programs.

(20) The use of appropriate educational technology in the operation of projects funded under the Federal TRIO programs.

(21) Strategies for recruiting and serving hard to reach populations, including students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(b) The Secretary annually funds training on the subjects listed in paragraphs (a)(17), (a)(18), (a)(19), (a)(20), and (a)(21) of this section.

(c) The Secretary designates one or more of the training priorities from paragraph (a) of this section in the FEDERAL REGISTER notice inviting applications for the competition.

(Authority: 20 U.S.C. 1070a–11 and 1070a–17)

[Redesignated and amended at 75 FR 65773, Oct. 26, 2010]

§ 642.25 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed*. (1) An applicant whose grant application was not

evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the FEDERAL REGISTER notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the FEDERAL REGISTER notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ''scoring error'' does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the FEDERAL REGISTER notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 642.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition

based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW1)

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65773, Oct. 26, 2010]

§ 642.26 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for a new grant; and

(2) 34 CFR 75.253, for the second year of a project period.

(b) The Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) 170,000; or

(2) The amount requested by the applicant.

[75 FR 65774, Oct. 26, 2010]

Subpart D—What Conditions Must Be Met by a Grantee?

SOURCE: Redesignated at 75 FR 65772, Oct. 26, 2010, unless otherwise noted.

§ 642.30 What are allowable costs?

Allowable project costs may include the following costs reasonably related to carrying out a Training Program project:

(a) Rental of space, if space is not available at a sponsoring institution and if the space is not owned by a sponsoring institution.

(b) Printing.

(c) Postage.

(d) Purchase or rental of equipment.

(e) Consumable supplies.

(f) Transportation costs for participants and training staff.

(g) Lodging and subsistence costs for participants and training staff.

(h) Transportation costs, lodging and subsistence costs and fees for consultants, if any.

(i) Honorariums for speakers who are not members of the staff or consultants to the project.

(j) Other costs that are specifically approved in advance and in writing by the Secretary.

(Authority: 20 U.S.C. 1070a–11 and 1070a–17)

[47 FR 17788, Apr. 23, 1982. Redesignated and amended at 75 FR 65774, Oct. 26, 2010]

§ 642.31 What are unallowable costs?

Costs that may not be charged against a grant under this program include the following:

(a) Research not directly related to the evaluation or improvement of the project.

(b) Construction, renovation, or remodeling of any facilities.

(c) Stipends, tuition fees, and other direct financial assistance to trainees other than those participating in internships.

(Authority: 20 U.S.C. 1070a–11 and 1070a–17)

[47 FR 17788, Apr. 23, 1982. Redesignated and amended at 75 FR 65774, Oct. 26, 2010]

PART 643—TALENT SEARCH

Subpart A—General

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AUTHORITY: 20 U.S.C. 1070a–11 and 1070a–12, unless otherwise noted.

SOURCE: 58 FR 59145, Nov. 5, 1993, unless otherwise noted.

Subpart A—General

§ 643.1 What is the Talent Search program?

The Talent Search program provides grants for projects designed to—

(a) Identify qualified youths with potential for education at the postsecondary level and encourage them to complete secondary school and undertake a program of postsecondary education;

(b) Publicize the availability of, and facilitate the application for, student financial assistance for persons who seek to pursue postsecondary education; and

(c) Encourage persons who have not completed education programs at the secondary or postsecondary level to enter or reenter and complete these programs.

(Authority: 20 U.S.C. 1070a–12)

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65774, Oct. 26, 2010]

§ 643.2 Who is eligible for a grant?

The following entities are eligible for a grant to carry out a Talent Search project:

(a) An institution of higher education.

(b) A public or private agency or organization, including a community-based organization with experience in serving disadvantaged youth.

(c) A secondary school.

(d) A combination of the types of institutions, agencies, and organizations described in paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C. 1070a–11)

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65774, Oct. 26, 2010]

§ 643.3 Who is eligible to participate in a project?

(a) An individual is eligible to participate in a Talent Search project if the individual meets all the following requirements:

(1)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident;

(iv) Is a permanent resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands (Palau); or

(v) Is a resident of the Freely Associated States—the Federated States of Micronesia or the Republic of the Marshall Islands.

(2)(i) Has completed five years of elementary education or is at least 11 years of age but not more than 27 years of age.

(ii) However, an individual who is more than 27 years of age may participate in a Talent Search project if the individual cannot be appropriately served by an Educational Opportunity Center project under 34 CFR part 644 and if the individual's participation would not dilute the Talent Search project's services to individuals described in paragraph (a)(2)(i) of this section.

(3)(i) Is enrolled in or has dropped out of any grade from six through 12, or has graduated from secondary school, ; or

(ii) Has undertaken, but is not presently enrolled in, a program of postsecondary education,

(b) A veteran as defined in § 643.6(b), regardless of age, is eligible to participate in a Talent Search project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the age requirement in paragraph (a)(2).

(Authority: 20 U.S.C. 1070a–11 and 1070a–12)

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65775, Oct. 26, 2010]

§ 643.4 What services does a project provide?

(a) A Talent Search project must provide the following services:

(1) Connections for participants to high quality academic tutoring services to enable the participants to complete secondary or postsecondary courses.

(2) Advice and assistance in secondary school course selection and, if applicable, initial postsecondary course selection.

(3) Assistance in preparing for college entrance examinations and completing college admission applications.

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and on resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid (FAFSA).

(5) Guidance on and assistance in—

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education.

(6) Connections for participants to education or counseling services designed to improve the financial and economic literacy of the participants or the participants' parents, including financial planning for postsecondary education.

(b) A Talent Search project may provide services such as the following:

(1) Academic tutoring, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Personal and career counseling or activities.

(3) Information and activities designed to acquaint youth with the range of career options available to the youth.

(4) Exposure to the campuses of institutions of higher education, as well as to cultural events, academic programs, and other sites or activities not usually available to disadvantaged youth.

(5) Workshops and counseling for families of participants served.

(6) Mentoring programs involving elementary or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons.

(7) Programs and activities as described in this section that are specially designed for participants who are limited English proficient, from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youths, foster care youth, or other disconnected participants.

(8) Other activities designed to meet the purposes of the Talent Search Program in § 643.1.

(Authority: 20 U.S.C. 1070a–12)

[75 FR 65775, Oct. 26, 2010]

§ 643.5 How long is a project period?

A project period under the Talent Search program is five years.

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65775, Oct. 26, 2010]

§ 643.6 What regulations apply?

The following regulations apply to the Talent Search program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

(b) The regulations in this part 643.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1070a–11 and 1070a–12)

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65775, Oct. 26, 2010; 79 FR 76102, Dec. 19, 2014]

§ 643.7 What definitions apply?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or in 34 CFR 77.1:

Applicant	Grant
Application	Grantee
Budget	Private
Budget period	Project
EDGAR	Project period
Equipment	Public
Facilities	Secretary
Fiscal year	Supplies

(b) *Other definitions.* The following definitions also apply to this part:

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Talent Search program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.*, loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (*e.g.*, spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.*, public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.*, searches, application processes, and differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

HEA means the Higher Education Act of 1965, as amended.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Participant means an individual who—

(1) Is determined to be eligible to participate in the project under § 643.3; and

(2) Receives project services designed for his or her age or grade level.

Postsecondary education means education beyond the secondary school level.

Potential first-generation college student means—

(1) An individual neither of whose natural or adoptive parents received a baccalaureate degree;

(2) An individual who, prior to the age of 18, regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree; or

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Regular secondary school diploma means a level attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is—

(1) Established by a state educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR 691.16(a) through 691.16(c) for the Academic Competitiveness Grant (ACG) Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: Biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a ''4'' or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of ''3'' or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

Secondary school means a school that provides secondary education as determined under State law, except that it does not include education beyond grade 12.

Target area means a geographic area served by a Talent Search project.

Target school means a school designated by the applicant as a focus of project services.

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

(Authority: 20 U.S.C. 1070a–11, 1070a–12 and 1141)

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65775, Oct. 26, 2010; 79 FR 76102, Dec. 19, 2014]

Subpart B—How Does One Apply for an Award?

§ 643.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Talent Search grants as long as each application describes a project that serves a different target area or target schools, or another designated different population.

(b) For each grant competition, the Secretary designates, in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition, the different populations for which an eligible

entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–12; 1221e–3)

[75 FR 65776, Oct. 26, 2010]

§ 643.11 What assurance must an applicant submit?

An applicant must submit, as part of its application, assurances that—

(a) At least two-thirds of the individuals it serves under its proposed Talent Search project will be low-income individuals who are potential first-generation college students;

(b) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(c) The project will be located in a setting or settings accessible to the individuals proposed to be served by the project; and

(d) If the applicant is an institution of higher education, it will not use the project as a part of its recruitment program.

(Authority: 20 U.S.C. 1070a–12)

[58 FR 59145, Nov. 5, 1993. Redesignated and amended at 75 FR 65776, Oct. 26, 2010]

Subpart C—How Does the Secretary Make a Grant?

§ 643.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1)(i) The Secretary evaluates the application on the basis of the selection criteria in § 643.21.

(ii) The maximum score for all the criteria in § 643.21 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) For an application for a new grant to continue to serve substantially the same populations and campuses that the applicant is serving under an expiring project, the Secretary evaluates the applicant's prior experience of high quality service delivery under the expiring project on the basis of the outcome criteria in § 643.22.

(ii) The maximum total score for all the criteria in § 643.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

(b) The Secretary makes new grants in rank order on the basis of the applications' total scores under paragraphs (a)(1) and (a)(2) of this section.

(c) If the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses the remaining funds to serve geographic areas and eligible populations that have been underserved by the Talent Search program.

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

(Authority: 20 U.S.C. 1070a–11, 1070a–12, and 1144a(a))

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65776, Oct. 26, 2010]

§ 643.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need for the project* (24 points). The Secretary evaluates the need for a Talent Search project in the proposed target area on the basis of the extent to which the application contains clear evidence of the following:

(1) (4 points) A high number or high percentage of the following—

(i) Low-income families residing in the target area; or

(ii) Students attending the target schools who are eligible for free or reduced priced lunch as described in sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act.

(2) (2 points) Low rates of high school persistence among individuals in the target schools as evidenced by the annual student persistence rates in the proposed target schools for the most recent year for which data are available.

(3) (4 points) Low rates of students in the target school or schools who graduate high school with a regular secondary school diploma in the standard number of years for the most recent year for which data are available.

(4) (6 points) Low postsecondary enrollment and completion rates among individuals in the target area and schools as evidenced by—

(i) Low rates of enrollment in programs of postsecondary education by graduates of the target schools in the most recent year for which data are available; and

(ii) A high number or high percentage of individuals residing in the target area with education completion levels below the baccalaureate degree level.

(5) (2 points) The extent to which the target secondary schools do not offer their students the courses or academic support to complete a rigorous secondary school program of study or have low participation or low success by low-income or first generation students in such courses.

(6) (6 points) Other indicators of need for a TS project, including low academic achievement and low standardized test scores of students enrolled in the target schools, a high ratio of students to school counselors in the target schools, and the presence of unaddressed academic or socio-economic problems of eligible individuals, including foster care youth and homeless children and youth in the target schools or the target area.

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Secondary school persistence.

(2) (2 points) Secondary school graduation (regular secondary school diploma).

(3) (1 point) Secondary school graduation (rigorous secondary school program of study).

(4) (2 points) Postsecondary education enrollment.

(5) (1 point) Postsecondary degree attainment.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (3 points) The plan to inform the residents, schools, and community organizations in the target area of the purpose, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) (3 points) The plan to identify and select eligible project participants.

(3) (10 points) The plan for providing the services delineated in § 643.4 as appropriate based on the project's assessment of each participant's need for services.

(4) (6 points) The plan to work in a coordinated, collaborative, and cost-effective manner as part of an overarching college access strategy with the target schools or school system and other programs for disadvantaged students to provide participants with access to and assistance in completing a rigorous secondary school program of study.

(5) (6 points) The plan, including timelines, personnel, and other resources, to ensure the proper and efficient administration of the project, including the project's organizational structure; the time commitment of key project staff; and financial, personnel, and records management.

(6) (2 points) The plan to follow former participants as they enter, continue in, and complete postsecondary education.

(d) *Applicant and community support* (16 points). The Secretary evaluates the applicant and community support for the proposed project on the basis of the extent to which the applicant has

made provision for resources to supplement the grant and enhance the project's services, including—

(1) (8 points) Facilities, equipment, supplies, personnel, and other resources committed by the applicant; and

(2) (8 points) Resources secured through written commitments from community partners.

(i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations;

(ii) An applicant that is a secondary school must include in its commitments from institutions of higher education, community organizations, and, as appropriate, other secondary schools and the school district; and

(iii) An applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

(e) *Quality of personnel* (9 points). (1) The Secretary evaluates the quality of the personnel the applicant plans to use in the project on the basis of the following:

(i) The qualifications required of the project director.

(ii) The qualifications required of each of the other personnel to be used in the project.

(iii) The plan to employ personnel who have succeeded in overcoming the disadvantages of circumstances like those of the population of the target area.

(2) In evaluating the qualifications of a person, the Secretary considers his or her experience and training in fields related to the objectives of the project.

(f) *Budget* (5 points). The Secretary evaluates the extent to which the project budget is reasonable, cost-effective, and adequate to support the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project's objectives;

(2) Provide for the applicant to determine, using specific and quantifiable measures, the success of the project in—

(i) Making progress toward achieving its objectives (a formative evaluation); and

(ii) Achieving its objectives at the end of the project period (a summative evaluation); and

(3) Provide for the disclosure of unanticipated project outcomes, using quantifiable measures if appropriate.

(Approved by the Office of Management and Budget under control number 1840–0065)

(Authority: 20 U.S.C. 1070a–12)

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65776, Oct. 26, 2010]

§ 643.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 643.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Talent Search project;

(2) Uses the approved project objectives for the applicant's expiring Talent Search grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award any PE points for the criterion specified in paragraph (d)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) For purposes of the evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (3 points) *Secondary school persistence.* Whether the applicant met or exceeded its objective regarding the continued secondary school enrollment of participants.

(3) (3 points) *Secondary school graduation* (regular secondary school diploma). Whether the applicant met or exceeded its objective regarding the graduation of participants served during the project year from secondary school with a regular secondary school diploma in the standard number of years.

(4) (1.5 points) *Secondary school graduation* (rigorous secondary school program of study). Whether the applicant met or exceeded its objective regarding the graduation of participants served during the project year who completed a rigorous secondary school program of study.

(5) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its objective regarding the participants expected to graduate from high school in the school year who enrolled in an institution of higher education within the time period specified in the approved objective.

(6) (1.5 points) *Postsecondary completion.* Whether the applicant met or exceeded its objective regarding project participants who enrolled in and completed a program of postsecondary education within the number of years specified in the approved objective. The applicant may determine success in meeting the objective by using a randomly selected sample of participants in accordance with the parameters established by the Secretary in the FEDERAL REGISTER notice inviting applications or other published application materials for the competition.

(Approved by the Office of Management and Budget under control number 1840—NEW7)

(Authority: 20 U.S.C. 1070a–12)

[75 FR 65777, Oct. 26, 2010]

§ 643.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) $200,000; or

(2) The amount requested by the applicant.

(Approved by the Office of Management and Budget under control number 1840–0549)

(Authority: 20 U.S.C. 1070a–11)

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65778, Oct. 26, 2010]

§ 643.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all application submission requirements included in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the FEDERAL REGISTER notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the FEDERAL REGISTER notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ''scoring error'' does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the FEDERAL REGISTER notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 643.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's

agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW2)

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65778, Oct. 26, 2010]

Subpart D—What Conditions Must Be Met by a Grantee?

§ 643.30 What are allowable costs?

The cost principles that apply to the Talent Search program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) Transportation, meals, and, if necessary, lodging for participants and project staff for—

(1) Visits to postsecondary educational institutions;

(2) Participation in ''College Day'' activities;

(3) Field trips for participants to observe and meet with persons who are employed in various career fields and who can act as role models for participants; and

(4) Transportation to institutions of higher education, secondary schools not attended by the participants, or other locations at which the participant receives instruction that is part of a rigorous secondary school program of study.

(b) Purchase of testing materials and test preparation programs for participants.

(c) Fees required for admission applications for postsecondary education, college entrance examinations, or alternative education examinations if—

(1) A waiver of the fee is unavailable; and

(2) The fee is paid by the grantee to a third party on behalf of a participant.

(d) In-service training of project staff.

(e) Rental of space if—

(1) Space is not available at the site of the grantee; and

(2) The rented space is not owned by the grantee.

(f) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(g) Purchase, lease, service agreement, or rental of computer equipment and software needed for project administration and recordkeeping.

(h) Tuition costs for a course that is part of a rigorous secondary school program of study if—

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken through an accredited institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in § 643.7(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a regular secondary school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with Talent Search grant funds to an institution of higher education on behalf of a participant; and

(8) The Talent Search project pays for no more than the equivalent of two courses for a participant each school year.

(Authority: 20 U.S.C. 1070a–11 and 1070a–12)

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65779, Oct. 26, 2010; 79 FR 76102, Dec. 19, 2014]

§ 643.31 What are unallowable costs?

Costs that are unallowable under the Talent Search program include, but are not limited to, the following:

(a) Stipends and other forms of direct financial support for participants.

(b) Application fees for financial aid.

(c) Research not directly related to the evaluation or improvement of the project.

(d) Construction, renovation, and remodeling of any facilities.

(Authority: 20 U.S.C. 1070a–11 and 1070a–12)

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65779, Oct. 26, 2010]

§ 643.32 What other requirements must a grantee meet?

(a) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each participant in the project at the time that the individual is selected to participate.

(2) A grantee shall determine the status of a low-income individual on the basis of the documentation described in section 402A(e) of the HEA.

(b) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the FEDERAL REGISTER notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

(c) *Recordkeeping.* For each participant, a grantee must maintain a record of—

(1) The basis for the grantee's determination that the participant is eligible to participate in the project under § 643.3;

(2) The grantee's needs assessment for the participant;

(3) The services that are provided to the participant;

(4) The specific educational progress made by the participant as a result of the services; and

(5) To the extent practicable, any services the TS participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the TS program.

(d) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (d)(1) of this section if the applicant demonstrates that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the TS program and other Federal TRIO Programs (sections 402B through 402F of the HEA) or similar programs funded through other sources.

(Approved by the Office of Management and Budget under control number 1840–NEW2)

(Authority: 20 U.S.C. 1070a–11 and 1070a–12)

[58 FR 59145, Nov. 5, 1993, as amended at 75 FR 65779, Oct. 26, 2010]

PART 644—EDUCATIONAL OPPORTUNITY CENTERS

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AUTHORITY: 20 U.S.C. 1070a–11 and 1070a–16, unless otherwise noted.

SOURCE: 59 FR 2658, Jan. 18, 1994, unless otherwise noted.

Subpart A—General

§ 644.1 What is the Educational Opportunity Centers program?

The Educational Opportunity Centers program provides grants for projects designed—

(a) To provide information regarding financial and academic assistance available to individuals who desire to pursue a program of postsecondary education;

(b) To provide assistance to individuals in applying to admission to institutions that offer programs of postsecondary education, including assistance in preparing necessary applications for use by admissions and financial aid officers; and

(c) To improve the financial and economic literacy of participants on topics such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

(Authority: 20 U.S.C. 1070a–16)

[59 FR 2658, Jan. 18, 1994, as amended at 75 FR 65780, Oct. 26, 2010]

§ 644.2 Who is eligible for a grant?

The following entities are eligible for a grant to carry out an Educational Opportunity Centers project:

(a) An institution of higher education.

(b) A public or private agency or organization, including a community-based organization with experience in serving disadvantaged youth.

(c) A secondary school.

(d) A combination of the types of institutions, agencies, and organizations described in paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C. 1070a–11)

[59 FR 2658, Jan. 18, 1994, as amended at 75 FR 65780, Oct. 26, 2010]

§ 644.3 Who is eligible to participate in a project?

(a) An individual is eligible to participate in an Educational Opportunity Centers project if the individual meets all of the following requirements:

(1)(i) Is a citizen or national of the United States;

(ii) Is a permanent resident of the United States;

(iii) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident;

(iv) Is a permanent resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands (Palau); or

(v) Is a resident of the Freely Associated States—the Federated States of Micronesia or the Republic of the Marshall Islands.

(2)(i) Is at least 19 years of age; or

(ii) Is less than 19 years of age, and the individual cannot be appropriately served by a Talent Search project under 34 CFR part 643, and the individual's participation would not dilute the Educational Opportunity Centers project's services to individuals described in paragraph (a)(2)(i) of this section.

(3) Expresses a desire to enroll, or is enrolled, in a program of postsecondary education, and requests information or assistance in applying for admission to, or financial aid for, such a program.

(b) A veteran as defined in § 644.7(b), regardless of age, is eligible to participate in an Educational Opportunity Centers project if he or she satisfies the eligibility requirements in paragraph (a) of this section other than the age requirement in paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 1070a–11 and 1070a–16)

§ 644.4 What services may a project provide?

An Educational Opportunity Centers project may provide the following services:

(a) Public information campaigns designed to inform the community about opportunities for postsecondary education and training.

(b) Academic advice and assistance in course selection.

(c) Assistance in completing college admission and financial aid applications.

(d) Assistance in preparing for college entrance examinations.

(e) Education or counseling services designed to improve the financial and economic literacy of participants.

(f) Guidance on secondary school reentry or entry to a General Educational Development (GED) program or other alternative education program for secondary school dropouts.

(g) Individualized personal, career, and academic counseling.

(h) Tutorial services.

(i) Career workshops and counseling.

(j) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education, students, or any combination of these persons.

(k) Programs and activities described in this section that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youth, participants who are foster care youth, or other disconnected participants.

(l) Other activities designed to meet the purposes of the Educational Opportunity Centers program stated in § 644.1.

(Authority: 20 U.S.C. 1070a–16)

[59 FR 2658, Jan. 18, 1994, as amended at 75 FR 65780, Oct. 26, 2010]

§ 644.5 How long is a project period?

A project period under the Educational Opportunity Centers program is five years.

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65780, Oct. 26, 2010]

§ 644.6 What regulations apply?

The following regulations apply to the Educational Opportunity Centers program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

(b) The regulations in this part 644.

(Authority: 20 U.S.C. 1070a–11 and 1070a–16)

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

[59 FR 2658, Jan. 18, 1994, as amended at 75 FR 65780, Oct. 26, 2010; 79 FR 76102, Dec. 19, 2014]

§ 644.7 What definitions apply?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or in 34 CFR 77.1:

Applicant	Grant
Application	Grantee
Budget	Private
Budget period	Project
EDGAR	Project period
Equipment	Public
Facilities	Secretary
Fiscal year	Supplies

(b) *Other definitions.* The following definitions also apply to this part:

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Educational Opportunity Centers program and that—

(i) Is separate and distinct from any other population that the entity has applied for a grant under this chapter to serve; or

(ii) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(i) Personal and family budget planning;

(ii) Understanding credit building principles to meet long-term and short-term goals (*e.g.*, loan to debt ratio, credit scoring, negative impacts on credit scores);

(iii) Cost planning for postsecondary or postbaccalaureate education (*e.g.*, spending, saving, personal budgeting);

(iv) College cost of attendance (*e.g.*, public vs. private, tuition vs. fees, personal costs);

(v) Financial assistance (*e.g.*, searches, application processes, and differences between private and government loans, assistanceships); and

(vi) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

HEA means the Higher Education Act of 1965, as amended.

Homeless children and youth means those persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Participant means an individual who—

(i) Is determined to be eligible to participate in the project under § 644.3; and

(ii) Receives project services.

Postsecondary education means education beyond the secondary school level.

Potential first-generation college student means—

(i) An individual neither of whose parents received a baccalaureate degree; or

(ii) An individual who regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree.

Secondary school means a school that provides secondary education as determined under State law, except that it does not include education beyond grade 12.

Target area means a geographic area served by an Educational Opportunity Centers project.

Veteran means a person who—

(i) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(ii) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(iii) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(iv) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

(Authority: 20 U.S.C. 1070a–11, 1070a–16, and 1141)

[59 FR 2658, Jan. 18, 1994, as amended at 75 FR 65780, Oct. 26, 2010; 79 FR 76102, Dec. 19, 2014]

Subpart B—How Does One Apply for an Award?

§ 644.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for Educational Opportunity Centers grants as long as each application describes a project that serves a different target area or another designated different population.

(b) For each grant competition, the Secretary designates, in the FEDERAL REGISTER notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–11, 1221e–3)

[75 FR 65781, Oct. 26, 2010]

§ 644.11 What assurances must an applicant submit?

An applicant must submit, as part of its application, assurances that—

(a) At least two-thirds of the individuals it serves under its proposed Educational Opportunity Centers project

will be low-income individuals who are potential first-generation college students;

(b) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(c) The project will be located in a setting or settings accessible to the individuals proposed to be served by the project; and

(d) If the applicant is an institution of higher education, it will not use the project as a part of its recruitment program.

(Authority: 20 U.S.C. 1070a–16)

[59 FR 2658, Jan. 18, 1994. Redesignated and amended at 75 FR 65781, Oct. 26, 2010]

Subpart C—How Does the Secretary Make a Grant?

§ 644.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1)(i) The Secretary evaluates the application on the basis of the selection criteria in § 644.21.

(ii) The maximum score for all the criteria in § 644.21 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) For an application for a new grant to continue to serve substantially the same populations and campuses that the applicant is serving under an expiring project, the Secretary evaluates the applicant's prior experience of high quality service delivery under the expiring project on the basis of the outcome criteria in § 644.22.

(ii) The maximum total score for all the criteria in § 644.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

(b) The Secretary makes new grants in rank order on the basis of the applications' total scores under paragraph (a) of this section.

(c) If the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses the remaining funds to serve geographic areas and eligible populations that have been underserved by the Educational Opportunity Centers program.

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

(Authority: 20 U.S.C. 1070a–11, 1070a–16, and 1144a(a))

[59 FR 2658, Jan. 18, 1994, as amended at 75 FR 65781, Oct. 26, 2010]

§ 644.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need for the project* (24 points). The Secretary evaluates the need for an Educational Opportunity Centers project in the proposed target area on the basis of the extent to which the application contains clear evidence of—

(1) A high number or percentage, or both, of low-income families residing in the target area;

(2) A high number or percentage, or both, of individuals residing in the target area with education completion levels below the baccalaureate level;

(3) A high need on the part of residents of the target area for further education and training from programs of postsecondary education in order to meet changing employment trends; and

(4) Other indicators of need for an Educational Opportunity Centers project, including the presence of

unaddressed educational or socioeconomic problems of adult residents in the target area.

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Secondary school diploma or equivalent.

(2) (3 points) Postsecondary enrollment.

(3) (1.5 points) Financial aid applications.

(4) (1.5 points) College admission applications.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (4 points) The plan to inform the residents, schools, and community organizations in the target area of the goals, objectives, and services of the project and the eligibility requirements for participation in the project;

(2) (4 points) The plan to identify and select eligible participants and ensure their participation without regard to race, color, national origin, gender, or disability;

(3) (2 points) The plan to assess each participant's need for services provided by the project;

(4) (12 points) The plan to provide services that meet participants' needs and achieve the objectives of the project; and

(5) (8 points) The management plan to ensure the proper and efficient administration of the project including, but not limited to, the project's organizational structure, the time committed to the project by the project director and other personnel, and, where appropriate, its coordination with other projects for disadvantaged students.

(d) *Applicant and community support* (16 points). The Secretary evaluates the applicant and community support for the proposed project on the basis of the extent to which the applicant has made provision for resources to supplement the grant and enhance the project's services, including—

(1) (8 points) Facilities, equipment, supplies, personnel, and other resources committed by the applicant; and

(2) (8 points) Resources secured through written commitments from schools, community organizations, and others.

(e) *Quality of personnel* (9 points). (1) The Secretary evaluates the quality of the personnel the applicant plans to use in the project on the basis of the following:

(i) The qualifications required of the project director.

(ii) The qualifications required of each of the other personnel to be used in the project.

(iii) The plan to employ personnel who have succeeded in overcoming the disadvantages or circumstances like those of the population of the target area.

(2) In evaluating the qualifications of a person, the Secretary considers his or her experience and training in fields related to the objectives of the project.

(f) *Budget* (5 points). The Secretary evaluates the extent to which the project budget is reasonable, cost-effective, and adequate to support the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project's objectives;

(2) Provide for the applicant to determine, using specific and quantifiable measures, the success of the project in—

(i) Making progress toward achieving its objectives (a formative evaluation); and

(ii) Achieving its objectives at the end of the project period (a summative evaluation); and

(3) Provide for the disclosure of unanticipated project outcomes, using quantifiable measures if appropriate.

(Approved by the Office of Management and Budget under control number 1840–NEW3)

(Authority: 20 U.S.C. 1070a–16)

[59 FR 2658, Jan. 18, 1994, as amended at 75 FR 65781, Oct. 26, 2010]

§ 644.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 644.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Educational Opportunity Centers project;

(2) Uses the approved project objectives for the applicant's expiring Educational Opportunity Centers grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award PE points for the criterion specified in paragraph (d)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (3 points) *Secondary school diploma.* Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who do not have a secondary school diploma or its equivalent who receive a secondary school diploma or its equivalent within the time period specified in the approved objective.

(3) (5 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard to the secondary school graduates served during the project year who enroll in programs of postsecondary education within the time period specified in the approved objective.

(4) (2 points) *Financial aid applications.* Whether the applicant met or exceeded its objective regarding participants applying for financial aid.

(5) (2 points) *College admission applications.* Whether the applicant met or exceeded its objective regarding participants applying for college admission.

(Approved by the Office of Management and Budget under control number 1840–NEW8)

(Authority: 20 U.S.C. 1070a–16)

[75 FR 65781, Oct. 26, 2010]

§ 644.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) $200,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

[59 FR 2658, Jan. 18, 1994, as amended at 75 FR 65782, Oct. 26, 2010]

§ 644.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements

included in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the FEDERAL REGISTER notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the FEDERAL REGISTER notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ''scoring error'' does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the FEDERAL REGISTER notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be

awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 644.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840—NEW3)

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65782, Oct. 26, 2010]

Subpart D—What Conditions Must Be Met by a Grantee?

§ 644.30 What are allowable costs?

The cost principles that apply to the Educational Opportunity Centers program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) Transportation, meals, and, with specific prior approval of the Secretary, lodging for participants and project staff for—

(1) Visits to postsecondary educational institutions;

(2) Participation in ''College Day'' activities; and

(3) Field trips for participants to observe and meet with persons who are employed in various career fields and can act as role models for participants.

(b) Purchase of testing materials and test preparation programs for participants.

(c) Fees required for admission applications for postsecondary education, college entrance examinations, or alternative education examinations if—

(1) A waiver is unavailable; and

(2) The fee is paid by the grantee to a third party on behalf of a participant.

(d) In-service training of project staff.

(e) Rental of space if—

(1) Space is not available at the site of the grantee; and

(2) The rented space is not owned by the grantee.

(f) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies for participant development, project administration, or project recordkeeping.

(Authority: 20 U.S.C. 1070a–11 and 1070a–16)

[59 FR 2658, Jan. 18, 1994, as amended at 75 FR 65783, Oct. 26, 2010; 79 FR 76102, Dec. 19, 2014]

§ 644.31 What are unallowable costs?

Costs that are unallowable under the Educational Opportunity Centers program include, but are not limited to, the following:

(a) Tuition, fees, stipends, and other forms of direct financial support for participants.

(b) Research not directly related to the evaluation or improvement of the project.

(c) Construction, renovation, and remodeling of any facilities.

(Authority: 20 U.S.C. 1070a-11 and 1070a-16)

§ 644.32 What other requirements must a grantee meet?

(a) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each participant in the project at the time that the individual is selected to participate.

(2) A grantee shall determine the status of a low-income individual on the basis of the documentation described in section 402A(e) of the HEA.

(b) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the FEDERAL REGISTER notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

(c) *Recordkeeping.* For each participant, a grantee must maintain a record of—

(1) The basis for the grantee's determination that the participant is eligible to participate in the project under § 644.3;

(2) The services that are provided to the participant;

(3) The specific educational benefits received by the participant; and

(4) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the EOC program.

(d) *Project director*. (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (d)(1) of this section if the applicant demonstrates that that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the program and other Federal TRIO programs (sections 402B through 402F of the HEA) and similar programs funded through other sources.

(Approved by the Office of Management and Budget under control number 1840—NEW8)

(Authority: 20 U.S.C. 1070a-11 and 1070a-16).

[59 FR 2658, Jan. 18, 1994, as amended at 75 FR 65783, Oct. 26, 2010]

PART 645—UPWARD BOUND PROGRAM

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AUTHORITY: 20 U.S.C. 1070a–11 and 1070a–13, unless otherwise noted.

SOURCE: 60 FR 4748, Jan. 24, 1995, unless otherwise noted.

Subpart A—General

§ 645.1 What is the Upward Bound Program?

(a) The Upward Bound Program provides Federal grants to projects designed to generate in program participants the skills and motivation necessary to complete a program of secondary education and to enter and succeed in a program of postsecondary education.

(b) The Upward Bound Program provides Federal grants for the following three types of projects:

(1) Regular Upward Bound projects.

(2) Upward Bound Math and Science Centers.

(3) Veterans Upward Bound projects.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.2 Who is eligible for a grant?

The following entities are eligible to apply for a grant to carry out an Upward Bound project:

(a) An institution of higher education.

(b) A public or private agency or organization, including a community-based organization with experience in serving disadvantaged youth.

(c) A secondary school.

(d) A combination of the types of institutions, agencies, and organizations described in paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C 1070a–11 and 1070a–13)

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65784, Oct. 26, 2010]

§ 645.3 Who is eligible to participate in an Upward Bound project?

An individual is eligible to participate in a Regular, Veterans, or a Math and Science Upward Bound project if the individual meets all of the following requirements:

(a)(1) Is a citizen or national of the United States.

(2) Is a permanent resident of the United States.

(3) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident.

(4) Is a permanent resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(5) Is a resident of the Freely Associated States—the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau.

(b) Is—

(1) A potential first-generation college student;

(2) A low-income individual; or

(3) An individual who has a high risk for academic failure.

(c) Has a need for academic support, as determined by the grantee, in order to pursue successfully a program of education beyond high school.

(d) At the time of initial selection, has completed the eighth grade and is at least 13 years old but not older than 19, although the Secretary may waive the age requirement if the applicant demonstrates that the limitation would defeat the purposes of the Upward Bound program. However, a veteran as defined in § 645.6, regardless of age, is eligible to participate in an Upward Bound project if he or she satisfies the eligibility requirements in paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65784, Oct. 26, 2010]

§ 645.4 What are the grantee requirements for documenting the low-income and first-generation status of participants?

(a) For purposes of documenting a participant's low-income status the following applies:

(1) In the case of a student who is not an independent student, an institution shall document that the student is a low-income individual by obtaining and maintaining—

(i) A signed statement from the student's parent or legal guardian regarding family income;

(ii) Verification of family income from another governmental source;

(iii) A signed financial aid application; or

(iv) A signed United States or Puerto Rican income tax return.

(2) In the case of a student who is an independent student, an institution shall document that the student is a

low-income individual by obtaining and maintaining—

(i) A signed statement from the student regarding family income;

(ii) Verification of family income from another governmental source;

(iii) A signed financial aid application; or

(iv) A signed United States or Puerto Rican income tax return.

(b) For purposes of documenting potential first generation college student status, documentation consists of a signed statement from a dependent participant's parent, or a signed statement from an independent participant.

(c) A grantee does not have to revalidate a participant's eligibility after the participant's initial selection.

(Approved by the Office of Management and Budget under control number 1840–0550)

(Authority: 20 U.S.C. 1070a–11)

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65784, Oct. 26, 2010]

§ 645.5 What regulations apply?

The following regulations apply to the Upward Bound Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

(b) The regulations in this part 645.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65784, Oct. 26, 2010; 79 FR 76102, Dec. 19, 2014]

§ 645.6 What definitions apply to the Upward Bound Program?

(a) *General definitions*. The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

Applicant	Budget period
Application	EDGAR
Award	Equipment
Budget	Facilities
Grant	Secretary
Grantee	State
Project	Supplies
Project period	

(b) *Other Definitions*. The following definitions also apply to this part:

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Upward Bound program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Family taxable income means—

(1) With regard to a dependent student, the taxable income of the individual's parents;

(2) With regard to a dependent student who is an orphan or ward of the court, no taxable income;

(3) With regard to an independent student, the taxable income of the student and his or her spouse.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.*, loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (*e.g.*, spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.*, public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.*, searches, application processes, and differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

Foster care youth means youth who are in foster care or are aging out of the foster care system.

HEA means the Higher Education Act of 1965, as amended.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

Independent student means a student who—

(1) Is an orphan or ward of the court;

(2) Is a veteran of the Armed Forces of the United States (as defined in this section);

(3) Is a married individual; or

(4) Has legal dependents other than a spouse.

Individual who has a high risk for academic failure (regular Upward Bound participant) means an individual who—

(1) Has not achieved at the proficient level on State assessments in reading or language arts;

(2) Has not achieved at the proficient level on State assessments in math;

(3) Has not successfully completed pre-algebra or algebra by the beginning of the tenth grade; or

(4) Has a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

Limited English proficiency with reference to an individual, means an individual whose native language is other than English and who has sufficient difficulty speaking, reading, writing, or understanding the English language to deny that individual the opportunity to learn successfully in classrooms in which English is the language of instruction.

Low-income individual means an individual whose family taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participates in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Organization/Agency means an entity that is legally authorized to operate programs such as Upward Bound in the State where it is located.

Participant means an individual who—

(1) Is determined to be eligible to participate in the project under §645.3;

(2) Resides in the target area, or is enrolled in a target school at the time of acceptance into the project; and

(3) Has been determined by the project director to be committed to the project, as evidenced by being allowed to continue in the project for at least—

(i) Ten days in a summer component if the individual first enrolled in an Upward Bound project's summer component; or

(ii) Sixty days if the individual first enrolled in an Upward Bound project's academic year component.

Potential first-generation college student means—

(1) An individual neither of whose natural or adoptive parents received a baccalaureate degree; or

(2) A student who, prior to the age of 18, regularly resided with and received support from only one natural or adoptive parent and whose supporting parent did not receive a baccalaureate degree.

Regular secondary school diploma means a diploma attained by individuals who meet or exceed the coursework and performance standards for high school completion established by the individual's State.

Rigorous secondary school program of study means a program of study that is—

(1) Established by a State educational agency (SEA) or local educational agency (LEA) and recognized as a rigorous secondary school program of study by the Secretary through the process described in 34 CFR 691.16(a) through (c) for the Academic Competitiveness Grant (ACG) Program;

(2) An advanced or honors secondary school program established by States and in existence for the 2004–2005 school year or later school years;

(3) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level

class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English;

(4) A secondary school program identified by a State-level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado;

(5) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of a ''4'' or higher on the examinations for at least two of those courses; or

(6) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of ''3'' or higher on the College Board's Advanced Placement Program Exams for at least two of those courses.

Secondary school means a school that provides secondary education as determined under State law.

Target area means a discrete local or regional geographical area designated by the applicant as the area to be served by an Upward Bound project.

Target school means a school designated by the applicant as a focus of project services.

Veteran means a person who—

(1) Served on active duty as a member of the Armed Forces of the United States for a period of more than 180 days and was discharged or released under conditions other than dishonorable;

(2) Served on active duty as a member of the Armed Forces of the United States and was discharged or released because of a service connected disability;

(3) Was a member of a reserve component of the Armed Forces of the United States and was called to active duty for a period of more than 30 days; or

(4) Was a member of a reserve component of the Armed Forces of the United States who served on active duty in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10, United States Code) on or after September 11, 2001.

Veteran who has a high risk for academic failure means a veteran who—

(1) Has been out of high school or dropped out of a program of postsecondary education for five or more years;

(2) Has scored on standardized tests below the level that demonstrates a likelihood of success in a program of postsecondary education; or

(3) Meets the definition of an individual with a disability as defined in § 645.6(b).

(Authority: 20 U.S.C. 1001 *et seq.*, 1070a–11, 1070a–13, 1088, 1141, 1141a, and 3283(a)).

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65784, Oct. 26, 2010; 79 FR 76103, Dec. 19, 2014]

Subpart B—What Kinds of Projects and Services Does the Secretary Assist Under This Program?

§ 645.10 What kinds of projects are supported under the Upward Bound Program?

The Secretary provides grants to the following three types of Upward Bound projects:

(a) Regular Upward Bound projects designed to prepare high school students for programs of postsecondary education.

(b) Upward Bound Math and Science Centers designed to prepare high school students for postsecondary education programs that lead to careers in the fields of math and science.

(c) Veterans Upward Bound projects designed to assist veterans to prepare for a program of postsecondary education.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.11 What services do all Upward Bound projects provide?

(a) Any project assisted under this part must provide—

(1) Academic tutoring to enable students to complete secondary or postsecondary courses, which may include instruction in reading, writing, study

skills, mathematics, science, and other subjects;

(2) Advice and assistance in secondary and postsecondary course selection;

(3) Assistance in preparing for college entrance examinations and completing college admission applications;

(4)(i) Information on the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid;

(5) Guidance on and assistance in—

(i) Secondary school reentry;

(ii) Alternative education programs for secondary school dropouts that lead to the receipt of a regular secondary school diploma;

(iii) Entry into general educational development (GED) programs; or

(iv) Entry into postsecondary education; and

(6) Education or counseling services designed to improve the financial and economic literacy of students or the students' parents, including financial planning for postsecondary education.

(b) Any project that has received funds under this part for at least two years must include as part of its core curriculum in the next and succeeding years, instruction in—

(1) Mathematics through pre-calculus;

(2) Laboratory science;

(3) Foreign language;

(4) Composition; and

(5) Literature.

(Authority: 20 U.S.C. 1070a–13)

[75 FR 65785, Oct. 26, 2010]

§ 645.12 What services may regular Upward Bound and Upward Bound Math-Science projects provide?

Any project assisted under this part may provide such services as—

(a) Exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

(b) Information, activities, and instruction designed to acquaint youth participating in the project with the range of career options available to the youth;

(c) On-campus residential programs;

(d) Mentoring programs involving elementary school or secondary school teachers or counselors, faculty members at institutions of higher education, students, or any combination of these persons;

(e) Work-study positions where youth participating in the project are exposed to careers requiring a postsecondary degree;

(f) Programs and activities as described in § 645.11 that are specially designed for participants who are limited English proficient, participants from groups that are traditionally underrepresented in postsecondary education, participants who are individuals with disabilities, participants who are homeless children and youths, participants in or who are aging out of foster care, or other disconnected participants; and

(g) Other activities designed to meet the purposes of the Upward Bound program in § 645.1.

(Authority: 20 U.S.C. 1070a–13)

[75 FR 65785, Oct. 26, 2010]

§ 645.13 How are regular Upward Bound projects organized?

(a) Regular Upward Bound projects—

(1) Must provide participants with a summer instructional component that is designed to simulate a college-going experience for participants, and an academic year component; and

(2) May provide a summer bridge component to those Upward Bound participants who have graduated from secondary school and intend to enroll in an institution of higher education in the following fall term. A summer bridge component provides participants with services and activities, including college courses, that aid in the transition from secondary education to postsecondary education.

(b) A summer instructional component shall—

(1) Be six weeks in length unless the grantee can demonstrate to the Secretary that a shorter period will not hinder the effectiveness of the project nor prevent the project from achieving

its goals and objectives, and the Secretary approves that shorter period; and

(2) Provide participants with one or more of the services described in § 645.11 at least five days per week.

(c)(1) Except as provided in paragraph (c)(2) of this section, an academic year component shall provide program participants with one or more of the services described in § 645.11 on a weekly basis throughout the academic year and, to the extent possible, shall not prevent participants from fully participating in academic and nonacademic activities at the participants' secondary school.

(2) If an Upward Bound project's location or the project's staff are not readily accessible to participants because of distance or lack of transportation, the grantee may, with the Secretary's permission, provide project services to participants every two weeks during the academic year.

(Authority: 20 U.S.C. 1070a–13)

[60 FR 4748, Jan. 24, 1995. Redesignated at 75 FR 65785, Oct. 26, 2010]

§ 645.14 What additional services do Upward Bound Math and Science Centers provide and how are they organized?

(a) In addition to the services that must be provided under § 645.11(a) and may be provided under § 645.11(b), an Upward Bound Math and Science Center must provide—

(1) Intensive instruction in mathematics and science, including hands-on experience in laboratories, in computer facilities, and at field-sites;

(2) Activities that will provide participants with opportunities to learn from mathematicians and scientists who are engaged in research and teaching at the applicant institution, or who are engaged in research or applied science at hospitals, governmental laboratories, or other public and private agencies;

(3) Activities that will involve participants with graduate and undergraduate science and mathematics majors who may serve as tutors and counselors for participants; and

(4) A summer instructional component that is designed to simulate a college-going experience that is at least six weeks in length and includes daily coursework and other activities as described in this section as well as in § 645.11.

(b) Math Science Upward Bound Centers may also include—

(1) A summer bridge component consisting of math and science related coursework for those participants who have completed high school and intend on enrolling in an institution of higher education in the following fall term; and

(2) An academic year component designed by the applicant to enhance achievement of project objectives in the most cost-effective way taking into account the distances involved in reaching participants in the project's target area.

(Approved by the Office of Management and Budget under control number 1840–0550)

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

[60 FR 4748, Jan. 24, 1995. Redesignated at 75 FR 65785, Oct. 26, 2010]

§ 645.15 What additional services may Veterans Upward Bound projects provide?

In addition to the services that must be provided under § 645.11, a Veterans Upward Bound project must—

(a) Provide intensive basic skills development in those academic subjects required for successful completion of a high school equivalency program and for admission to postsecondary education programs;

(b) Provide short-term remedial or refresher courses for veterans who are high school graduates but who have delayed pursuing postsecondary education. If the grantee is an institution of higher education, these courses shall not duplicate courses otherwise available to veterans at the institution;

(c) Assist veterans in securing support services from other locally available resources such as the Veterans Administration, State veterans agencies, veterans associations, and other State and local agencies that serve veterans; and

(d) Provide special services, including mathematics and science preparation,

to enable veterans to make the transition to postsecondary education.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

[60 FR 4748, Jan. 24, 1995. Redesignated and amended at 75 FR 65785, 65786, Oct. 26, 2010]

Subpart C—How Does One Apply for An Award?

§ 645.20 How many applications for an Upward Bound award may an eligible applicant submit?

(a) An applicant may submit more than one application as long as each application describes a project that serves a different target area or target school, or another designated different population.

(b) For each grant competition, the Secretary designates, in the FEDERAL REGISTER notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–13, 1221e–3)

[75 FR 65786, Oct. 26, 2010]

§ 645.21 What assurances must an applicant include in an application?

(a) An applicant for a Regular Upward Bound award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or individuals who have a high risk for academic failure;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(b) An applicant for an Upward Bound Math and Science Centers award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be either low-income individuals or potential first-generation college students;

(3) No student will be denied participation in a project because the student would enter the project after the 9th grade; and

(4) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(c) An applicant for a Veterans Upward Bound award must assure the Secretary that—

(1) Not less than two-thirds of the project's participants will be low-income individuals who are potential first-generation college students;

(2) The remaining participants will be low-income individuals, potential first-generation college students, or veterans who have a high risk for academic failure; and

(3) The project will collaborate with other Federal TRIO projects or programs serving similar populations in the target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

(Authority: 20 U.S.C. 1070a–13)

[75 FR 65786, Oct. 26, 2010]

Subpart D—How Does the Secretary Make a Grant?

§ 645.30 How does the Secretary decide which grants to make?

(a) The Secretary evaluates an application for a grant as follows:

(1)(i) The Secretary evaluates the application on the basis of the selection criteria in § 645.31.

(ii) The maximum score for all the criteria in § 645.31 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) If an applicant for a new grant proposes to continue to serve substantially the same target population and schools that the applicant is serving under an expiring project, the Secretary evaluates the applicant's prior experience of high quality service delivery under the expiring Upward Bound project on the basis of the outcome criteria in § 645.32.

(ii) The maximum total score for all the criteria in § 645.32 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

(b) The Secretary makes grants in rank order on the basis of the application's total scores under paragraphs (a)(1) and (a)(2) of this section.

(c) If the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses whatever remaining funds are available to serve geographic areas that have been underserved by the Upward Bound Program.

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

(Authority: 20 U.S.C. 1070a–11, 1070a–13)

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65786, Oct. 26, 2010]

§ 645.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a grant:

(a) *Need for the project* (24 points). In determining need for an Upward Bound project, the Secretary reviews each type of project (Regular, Math and Science, or Veterans) using different need criteria. The criteria for each type of project contain the same maximum score of 24 points and read as follows:

(1) The Secretary evaluates the need for a Regular Upward Bound project in the proposed target area on the basis of information contained in the application which clearly demonstrates that—

(i) The income level of families in the target area is low;

(ii) The education attainment level of adults in the target area is low;

(iii) Target high school dropout rates are high;

(iv) College-going rates in target high schools are low;

(v) Student/counselor ratios in the target high schools are high; and

(vi) Unaddressed academic, social and economic conditions in the target area pose serious problems for low-income, potentially first-generation college students.

(2) The Secretary evaluates the need for an Upward Bound Math and Science Center in the proposed target area on the basis of—

(i) The extent to which student performance on standardized achievement and assessment tests in mathematics and science in the target area is lower than State or national norms.

(ii) The extent to which potential participants attend schools in the target area that lack the resources and coursework that would help prepare persons for entry into postsecondary programs in mathematics, science, or engineering;

(iii) The extent to which such indicators as attendance data, dropout rates, college-going rates and student/counselor ratios in the target area indicate the importance of having additional educational opportunities available to low-income, first-generation students; and

(iv) The extent to which there are eligible students in the target area who have demonstrated interest and capacity to pursue academic programs and careers in mathematics and science, and who could benefit from an Upward Bound Math and Science program.

(3) The Secretary evaluates the need for a Veterans Upward Bound project

in the proposed target area on the basis of clear evidence that shows—

(i) The proposed target area lacks the services for eligible veterans that the applicant proposes to provide;

(ii) A large number of veterans who reside in the target area are low income and potential first generation college students;

(iii) A large number of veterans who reside in the target area who have not completed high school or, have completed high school but have not enrolled in a program of postsecondary education; and

(iv) Other indicators of need for a Veterans Upward Bound project, including the presence of unaddressed academic or socio-economic problems of veterans in the area.

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) For Regular Upward Bound and Upward Bound Math and Science Centers—

(i) (1 point) Academic performance (GPA);

(ii) (1 point) Academic performance (standardized test scores);

(iii) (2 points) Secondary school retention and graduation (with regular secondary school diploma);

(iv) (1 point) Completion of rigorous secondary school program of study;

(v) (3 points) Postsecondary enrollment; and

(vi) (1 point) Postsecondary completion.

(2) For Veterans Upward Bound—

(i) (2 points) Academic performance (standardized test scores);

(ii) (3 points) Education program retention and completion;

(iii) (3 points) Postsecondary enrollment; and

(iv) (1 point) Postsecondary completion.

(c) *Plan of operation* (30 points). The Secretary determines the quality of the applicant's plan of operation by assessing the quality of—

(1) The plan to inform the faculty and staff at the applicant institution or agency and the interested individuals and organizations throughout the target area of the goals and objectives of the project;

(2) The plan for identifying, recruiting, and selecting participants to be served by the project;

(3) The plan for assessing individual participant needs and for monitoring the academic progress of participants while they are in Upward Bound;

(4) The plan for locating the project within the applicant's organizational structure;

(5) The curriculum, services and activities that are planned for participants in both the academic year and summer components;

(6) The planned timelines for accomplishing critical elements of the project;

(7) The plan to ensure effective and efficient administration of the project, including, but not limited to, financial management, student records management, and personnel management;

(8) The applicant's plan to use its resources and personnel to achieve project objectives and to coordinate the Upward Bound project with other projects for disadvantaged students;

(9) The plan to work cooperatively with parents and key administrative, teaching, and counseling personnel at the target schools to achieve project objectives; and

(10) A follow-up plan for tracking graduates of Upward Bound as they enter and continue in postsecondary education.

(d) *Applicant and community support* (16 points). The Secretary evaluates the applicant and community support for the proposed project on the basis of the extent to which—

(1) The applicant is committed to supplementing the project with resources that enhance the project such as: space, furniture and equipment, supplies, and the time and effort of personnel other than those employed in the project.

(2) Resources secured through written commitments from community partners.

(i) An applicant that is an institution of higher education must include in its

application commitments from the target schools and community organizations;

(ii) An applicant that is a secondary school must include in its commitments from institutions of higher education, community organizations, and, as appropriate, other secondary schools and the school district;

(iii) An applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

(e) *Quality of personnel* (8 points). To determine the quality of personnel the applicant plans to use, the Secretary looks for information that shows—

(1) The qualifications required of the project director, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects;

(2) The qualifications required of each of the other personnel to be used in the project, including formal training or work experience in fields related to the objectives of the project;

(3) The quality of the applicant's plan for employing personnel who have succeeded in overcoming barriers similar to those confronting the project's target population.

(f) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support planned project services and activities; and

(2) Costs are reasonable in relation to the objectives and scope of the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project and include both quantitative and qualitative evaluation measures; and

(2) Examine in specific and measurable ways the success of the project in making progress toward achieving its process and outcomes objectives.

(Approved by the Office of Management and Budget under control number 1840–0550)

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65786, Oct. 26, 2010]

§ 645.32 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 645.30(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Upward Bound project;

(2) Uses the approved project objectives for the applicant's expiring Upward Bound grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award any PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award PE points for the criteria specified in paragraphs (e)(1)(i) and (e)(2)(i) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to the following PE criteria:

(1) Regular Upward Bound and Upward Bound Math and Science Centers PE criteria in paragraph (e)(1)(ii) of this section (Academic performance) and paragraph (e)(1)(iii) of this section

(Secondary school retention and graduation).

(2) Veterans Upward Bound PE criteria in paragraph (e)(2)(iii) of this section (Education program retention and completion).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) *Regular Upward Bound and Upward Bound Math and Science Centers.*

(i) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(ii) *Academic Performance.* (A) (1.5 points) Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who had a cumulative GPA at the end of the school year that was not less than the GPA specified in the approved objective.

(B) (1.5 points) Whether the applicant met or exceeded its approved objective with regard to participants served during the project period who met the academic performance levels on standardized tests as specified in the approved objectives.

(iii) (3 points) *Secondary school retention and graduation.* Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who returned the next school year or graduated from secondary school with a regular secondary school diploma.

(iv) (1.5 points) *Rigorous secondary school program of study.* Whether the applicant met or exceeded its approved objective with regard to current and prior participants with an expected high school graduation date in the school year who completed a rigorous secondary school program of study.

(v) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard current and prior participants with an expected high school graduation date in the school year who enrolled in a program of postsecondary education within the time period specified in the approved objective.

(vi) (1.5 points) *Postsecondary completion.* Whether the applicant met or exceeded its approved objective with regard to participants who enrolled in a program of postsecondary education and attained a postsecondary degree within the number of years specified in the approved objective.

(2) *Veterans Upward Bound.*

(i) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(ii) (3 points) *Academic improvement on standardized test.* Whether the applicant met or exceeded its approved objective with regard to participants who completed their Veterans Upward Bound educational program during the project year and who improved their academic performance as measured by a standardized test taken by participants before and after receiving services from the project.

(iii) (3 points) *Education program retention and completion.* Whether the applicant met or exceeded its approved objective with regard to participants served during the project year who remained in or completed their Veterans Upward Bound educational program.

(iv) (3 points) *Postsecondary enrollment.* Whether the applicant met or exceeded its approved objective with regard to participants who completed their Veterans Upward Bound educational program and enrolled in an institution of higher education within the time period specified in the approved objective.

(v) (3 points) *Postsecondary completion.* Whether the applicant met or exceeded its approved objective with regard to participants who enrolled in and completed a program of postsecondary education within the number of years specified in the approved objective.

(Approved by the Office of Management and Budget under control number 1840–NEW9)

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

[75 FR 65787, Oct. 26, 2010]

§ 645.33 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) $200,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65787, Oct. 26, 2010]

§ 645.34 How long is a project period?

A project period under the Upward Bound program is five years.

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65787, Oct. 26, 2010]

§ 645.35 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the FEDERAL REGISTER notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the FEDERAL REGISTER notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ''scoring error'' does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the FEDERAL REGISTER notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 645.30 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW4)

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65788, Oct. 26, 2010]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 645.40 What are allowable costs?

The cost principles that apply to the Upward Bound Program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) In-service training of project staff.

(b) Rental of space if space is not available at the host institution and the space rented is not owned by the host institution.

(c) For participants in an Upward Bound residential summer component, room and board—computed on a weekly basis—not to exceed the weekly rate the host institution charges regularly enrolled students at the institution.

(d) Room and board for those persons responsible for dormitory supervision of participants during a residential summer component.

(e) Educational pamphlets and similar materials for distribution at workshops for the parents of participants.

(f) Student activity fees for Upward Bound participants.

(g) Admissions fees, transportation, Upward Bound T-shirts, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of participants.

(h) Costs for one project-sponsored banquet or ceremony.

(i) Tuition costs for postsecondary credit courses at the host institution for participants in the summer bridge component.

(j)(1) Accident insurance to cover any injuries to a project participant while participating in a project activity; and

(2) Medical insurance and health service fees for the project participants while participating full-time in the summer component.

(k) Courses in English language instruction for project participants with limited proficiency in English and for whom English language proficiency is necessary to succeed in postsecondary education.

(l) Transportation costs of participants for regularly scheduled project activities.

(m) Transportation, meals, and overnight accommodations for staff members when they are required to accompany participants in project activities such as field trips.

(n) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies that support the delivery of services to participants, including technology used by participants in a rigorous secondary school program of study.

(o) Purchase, lease, or rental of computer equipment and software, service agreements for such equipment, and supplies needed for project administration and recordkeeping.

(p) Fees required for college admissions applications or entrance examinations if—

(1) A waiver of the fee is unavailable;

(2) The fee is paid by the grantee to a third party on behalf of a participant.

(q) Tuition costs for a course that is part of a rigorous secondary school program of study if—

(1) The course or a similar course is not offered at the secondary school that the participant attends or at another school within the school district;

(2) The grantee demonstrates to the Secretary's satisfaction that using grant funds is the most cost-effective way to deliver the course or courses necessary for the completion of a rigorous secondary school program of study for program participants;

(3) The course is taken through an accredited institution of higher education;

(4) The course is comparable in content and rigor to courses that are part of a rigorous secondary school program of study as defined in § 645.6(b);

(5) The secondary school accepts the course as meeting one or more of the course requirements for obtaining a regular secondary school diploma;

(6) A waiver of the tuition costs is unavailable;

(7) The tuition is paid with Upward Bound grant funds to an institution of higher education on behalf of a participant; and

(8) The Upward Bound project pays for no more than the equivalent of two courses for a participant each school year.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65789, Oct. 26, 2010; 79 FR 76103, Dec. 19, 2014]

§ 645.41 What are unallowable costs?

Costs that may not be charged against a grant under this program include the following:

(a) Research not directly related to the evaluation or improvement of the project.

(b) Meals for staff except as provided in § 645.40 (d) and (m) and in paragraph (c) of this section.

(c) Room and board for administrative and instructional staff personnel who do not have responsibility for dormitory supervision of project participants during a residential summer component unless these costs are approved by the Secretary.

(d) Room and board for participants in Veterans Upward Bound projects.

(e) Construction, renovation or remodeling of any facilities.

(f) Tuition, stipends, or any other form of student financial aid for project staff beyond that provided to employees of the grantee as part of its regular fringe benefit package.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

§ 645.42 What are Upward Bound stipends?

(a) An Upward Bound project may provide stipends for all participants who participate on a full-time basis.

(b) In order to receive the stipend, the participant must show evidence of satisfactory participation in activities of the project including—

(1) Regular attendance; and

(2) Performance in accordance with standards established by the grantee and described in the application.

(c) The grantee may prorate the amount of the stipend according to the number of scheduled sessions in which the student participated.

(d) The following rules govern the amounts of stipends a grantee is permitted to provide:

(1) For Regular Upward Bound projects and Upward Bound Math and Science Centers—

(i) For the academic year component, the stipend may not exceed $40 per month; and

(ii) The stipend may not exceed $60 per month for the summer school recess for a period not to exceed three months, except that youth participating in a work-study position may be paid $300 per month during the summer school recess.

(2) For Veterans Upward Bound projects, the stipend may not exceed $40 per month.

(Authority: 20 U.S.C. 1070a–11 and 1070a–13)

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65789, Oct. 26, 2010]

§ 645.43 What other requirements must a grantee meet?

(a) *Number of Participants*. For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the FEDERAL REGISTER notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

(b) *Project director*. (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (b)(1) of this section if the applicant demonstrates that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the program and other Federal TRIO programs (sections 402B through 402F of the HEA) and similar programs funded through other sources.

(c) *Recordkeeping*. For each participant, a grantee must maintain a record of—

(1) The basis for the grantee's determination that the participant is eligible to participate in the project under § 645.3;

(2) The basis for the grantee's determination that the participant has a need for academic support in order to pursue successfully a program of education beyond secondary school;

(3) The services that are provided to the participant;

(4) The educational progress of the participant during high school and, to the degree possible, during the participant's pursuit of a postsecondary education program; and

(5) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the UB program.

(Approved by the Office of Management and Budget under control number 1840–NEW9)

(Authority: 20 U.S.C. 1070a–11 and 1070a–13).

[60 FR 4748, Jan. 24, 1995, as amended at 75 FR 65789, Oct. 26, 2010]

PART 646—STUDENT SUPPORT SERVICES PROGRAM

Subpart A—General

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AUTHORITY: 20 U.S.C. 1070a–11 and 1070a–14, unless otherwise noted.

SOURCE: 61 FR 38537, July 24, 1996, unless otherwise noted.

Subpart A—General

§ 646.1 What is the Student Support Services Program?

The Student Support Services Program provides grants for projects designed to—

(a) Increase the college retention and graduation rates of eligible students;

(b) Increase the transfer rate of eligible students from two-year to four-year institutions; and

(c) Foster an institutional climate supportive of the success of students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, individuals with disabilities, homeless children and youth, foster care youth, or other disconnected students; and

(d) Improve the financial and economic literacy of students in areas such as—

(1) Basic personal income, household money management, and financial planning skills; and

(2) Basic economic decision-making skills.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

[61 FR 38537, July 24, 1996, as amended at 75 FR 65790, Oct. 26, 2010]

§ 646.2 Who is eligible to receive a grant?

An institution of higher education or a combination of institutions of higher education is eligible to receive a grant to carry out a Student Support Services project.

(Authority: 20 U.S.C. 1070a–14)

§ 646.3 Who is eligible to participate in a Student Support Services project?

A student is eligible to participate in a Student Support Services project if the student meets all of the following requirements:

(a) Is a citizen or national of the United States or meets the residency requirements for Federal student financial assistance.

(b) Is enrolled at the grantee institution or accepted for enrollment in the next academic term at that institution.

(c) Has a need for academic support, as determined by the grantee, in order to pursue successfully a postsecondary educational program.

(d) Is—

(1) A low-income individual;

(2) A first generation college student; or

(3) An individual with disabilities.

(Authority: 20 U.S.C. 1070a–14)

§ 646.4 What activities and services does a project provide?

(a) A Student Support Services project must provide the following services:

(1) Academic tutoring, directly or through other services provided by the institution, to enable students to complete postsecondary courses, which may include instruction in reading, writing, study skills, mathematics, science, and other subjects.

(2) Advice and assistance in postsecondary course selection.

(3)(i) Information on both the full range of Federal student financial aid programs and benefits (including Federal Pell Grant awards and loan forgiveness) and resources for locating public and private scholarships; and

(ii) Assistance in completing financial aid applications, including the Free Application for Federal Student Aid.

(4) Education or counseling services designed to improve the financial and economic literacy of students, including financial planning for postsecondary education.

(5) Activities designed to assist participants enrolled in four-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, graduate and professional programs.

(6) Activities designed to assist students enrolled in two-year institutions of higher education in applying for admission to, and obtaining financial assistance for enrollment in, a four-year program of postsecondary education.

(b) A Student Support Services project may provide the following services:

(1) Individualized counseling for personal, career, and academic matters provided by assigned counselors.

(2) Information, activities, and instruction designed to acquaint students participating in the project with the range of career options available to the students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(4) Mentoring programs involving faculty or upper class students, or a combination thereof.

(5) Securing temporary housing during breaks in the academic year for—

(i) Students who are homeless children and youths or were formerly homeless children and youths; and

(ii) Foster care youths.

(6) Programs and activities as described in paragraph (a) of this section or paragraphs (b)(1) through (b)(4) of this section that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students who are individuals with disabilities, students who are homeless children and youths, students who are foster care youth, or other disconnected students.

(7) Other activities designed to meet the purposes of the Student Support Services Program in § 646.1.

(Authority: 20 U.S.C. 1070a–14)

[75 FR 65790, Oct. 26, 2010]

§ 646.5 How long is a project period?

A project period under the Student Support Services program is five years.

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65790, Oct. 26, 2010]

§ 646.6 What regulations apply?

The following regulations apply to the Student Support Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

(b) The regulations in this part 646.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

[61 FR 38537, July 24, 1996, as amended at 75 FR 65790, Oct. 26, 2010; 79 FR 76103, Dec. 19, 2014]

§ 646.7 What definitions apply?

(a) *General definitions*. The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

Applicant	Fiscal year
Application	Grant
Award	Grant Period
Budget	Grantee
Budget Period	Project
Department	Project period
EDGAR	Public
Equipment	Secretary
Facilities	Supplies

(b) *Other definitions*. The following definitions also apply to this part:

Academic need with reference to a student means a student whom the grantee determines needs one or more of the services stated under § 646.4 to succeed in a postsecondary educational program.

Combination of institutions of higher education means two or more institutions of higher education that have entered into a cooperative agreement for the purpose of carrying out a common objective, or an entity designated or created by a group of institutions of

higher education for the purpose of carrying out a common objective on their behalf.

Different campus means a site of an institution of higher education that—

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the Student Support Services program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit building principles to meet long-term and short-term goals (*e.g.*, loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.*, public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.*, searches, application processes, differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

First generation college student means—

(1) A student neither of whose natural or adoptive parents received a baccalaureate degree;

(2) A student who, prior to the age of 18, regularly resided with and received support from only one parent and whose supporting parent did not receive a baccalaureate degree; or

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Foster care youth means youth who are in foster care or are aging out of the foster care system.

Homeless children and youth means persons defined in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a).

Individual with a disability means a person who has a disability, as that term is defined in section 12102 of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).

Institution of higher education means an educational institution as defined in sections 101 and 102 of the Act.

Limited English proficiency with reference to an individual, means a person whose native language is other than English and who has sufficient difficulty speaking, reading, writing, or understanding the English language to deny that individual the opportunity to learn successfully in classrooms in which English is the language of instruction.

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level amount in the calendar year preceding the year in which the individual initially participated in the project. The poverty level amount is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Participant means an individual who—

(1) Is determined to be eligible to participate in the project under § 646.3; and

(2) Receives project services that the grantee has determined to be sufficient to increase the individual's chances for success in a postsecondary educational program.

Sufficient financial assistance means the amount of financial aid offered a Student Support Services student, inclusive of Federal, State, local, private, and institutional aid which, together with parent or student contributions, is equal to the cost of attendance

as determined by a financial aid officer at the institution.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

[61 FR 38537, July 24, 1996, as amended at 75 FR 65790, Oct. 26, 2010; 79 FR 76103, Dec. 19, 2014]

Subpart B—How Does One Apply for an Award?

SOURCE: 75 FR 65791, Oct. 26, 2010, unless otherwise noted.

§ 646.10 How many applications may an eligible applicant submit and for what different populations may an eligible application be submitted?

(a) An eligible applicant may submit more than one application as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the FEDERAL REGISTER notice inviting applications and other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14; 20 U.S.C. 1221e–3)

§ 646.11 What assurances and other information must an applicant include in an application?

(a) An applicant must assure the Secretary in the application that—

(1) Not less than two-thirds of the project participants will be—

(i) Low-income individuals who are first generation college students; or

(ii) Individuals with disabilities;

(2) The remaining project participants will be low-income individuals, first generation college students, or individuals with disabilities; and

(3) Not less than one-third of the individuals with disabilities served also will be low-income individuals.

(b) The applicant must describe in the application its efforts, and where applicable, past history, in—

(1) Providing sufficient financial assistance to meet the full financial need of each student in the project; and

(2) Maintaining the loan burden of each student in the project at a manageable level.

(c) The applicant must assure the Secretary in the application that a student will not be served by more than one SSS project at any one time and that the SSS project will collaborate with other SSS and McNair projects and other State and institutional programs at the grantee-institution so that more students can be served.

(d) The applicant must assure the Secretary in the application that the institution's financial aid office will consult with the SSS project with respect to which SSS participants should receive grant aid and the amount of the grant aid awards.

(Approved by the Office of Management and Budget under control number 1840–NEW5)

(Authority: 20 U.S.C. 1070a–14)

Subpart C—How Does the Secretary Make a Grant?

§ 646.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1)(i) The Secretary evaluates the application on the basis of the selection criteria in § 646.21.

(ii) The maximum score for all the criteria in § 646.21 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) If an application for a new grant proposes to continue to serve substantially the same population and campus that the applicant is serving under an expiring grant, the Secretary evaluates the applicant's prior experience of high quality service delivery under the expiring grant on the basis of the outcome criteria in § 646.22.

(ii) The maximum total score for all the criteria in § 646.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition.

(iv) An applicant may earn up to 15 PE points for each of the designated

project years for which annual performance report data are available.

(v) The final PE score is the average of the scores for the three project years assessed.

(b) The Secretary makes new grants in rank order on the basis of the applications' total scores under paragraphs (a)(1) and (a)(2) of this section.

(c) If the total scores of two or more applications are the same and there is insufficient money available to fully fund them both after funding the higher-ranked applications, the Secretary chooses among the tied applications so as to serve geographic areas that have been underserved by the Student Support Services Program.

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

(Authority: 20 U.S.C. 1070a–11 and 1070a–14)

[61 FR 38537, July 24, 1996, as amended at 75 FR 65791, Oct. 26, 2010]

§ 646.21 What selection criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need for the project* (24 points). The Secretary evaluates the need for a Student Support Services project proposed at the applicant institution on the basis of the extent to which the application contains clear evidence of—

(1) (8 points) A high number or percentage, or both, of students enrolled or accepted for enrollment at the applicant institution who meet the eligibility requirements of § 646.3;

(2) (8 points) The academic and other problems that eligible students encounter at the applicant institution; and

(3) (8 points) The differences between eligible Student Support Services students compared to an appropriate group, based on the following indicators:

(i) Retention and graduation rates.

(ii) Grade point averages.

(iii) Graduate and professional school enrollment rates (four-year colleges only).

(iv) Transfer rates from two-year to four-year institutions (two-year colleges only).

(b) *Objectives* (8 points). The Secretary evaluates the quality of the applicant's proposed objectives in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources.

(1) (3 points) Retention in postsecondary education.

(2) (2 points) In good academic standing at grantee institution.

(3) Two-year institutions only. (i) (1 point) Certificate or degree completion; and

(ii) (2 points) Certificate or degree completion and transfer to a four-year institution.

(4) Four-year institutions only. (3 points) Completion of a baccalaureate degree.

(c) *Plan of operation* (30 points). The Secretary evaluates the quality of the applicant's plan of operation on the basis of the following:

(1) (3 points) The plan to inform the institutional community (students, faculty, and staff) of the goals, objectives, and services of the project and the eligibility requirements for participation in the project.

(2) (3 points) The plan to identify, select, and retain project participants with academic need.

(3) (4 points) The plan for assessing each individual participant's need for specific services and monitoring his or her academic progress at the institution to ensure satisfactory academic progress.

(4) (10 points) The plan to provide services that address the goals and objectives of the project.

(5) (10 points) The applicant's plan to ensure proper and efficient administration of the project, including the organizational placement of the project; the time commitment of key project staff; the specific plans for financial management, student records management, and personnel management; and, where appropriate, its plan for coordination with other programs for disadvantaged students.

(d) *Institutional commitment* (16 points). The Secretary evaluates the

institutional commitment to the proposed project on the basis of the extent to which the applicant has—

(1) (6 points) Committed facilities, equipment, supplies, personnel, and other resources to supplement the grant and enhance project services;

(2) (6 points) Established administrative and academic policies that enhance participants' retention at the institution and improve their chances of graduating from the institution;

(3) (2 points) Demonstrated a commitment to minimize the dependence on student loans in developing financial aid packages for project participants by committing institutional resources to the extent possible; and

(4) (2 points) Assured the full cooperation and support of the Admissions, Student Aid, Registrar and data collection and analysis components of the institution.

(e) *Quality of personnel* (9 points). To determine the quality of personnel the applicant plans to use, the Secretary looks for information that shows—

(1) (3 points) The qualifications required of the project director, including formal education and training in fields related to the objectives of the project, and experience in designing, managing, or implementing Student Support Services or similar projects;

(2) (3 points) The qualifications required of other personnel to be used in the project, including formal education, training, and work experience in fields related to the objectives of the project; and

(3) (3 points) The quality of the applicant's plan for employing personnel who have succeeded in overcoming barriers similar to those confronting the project's target population.

(f) *Budget* (5 points). The Secretary evaluates the extent to which the project budget is reasonable, cost-effective, and adequate to support the project.

(g) *Evaluation plan* (8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which—

(1) The applicant's methods for evaluation—

(i) (2 points) Are appropriate to the project and include both quantitative and qualitative evaluation measures; and

(ii) (2 points) Examine in specific and measurable ways, using appropriate baseline data, the success of the project in improving academic achievement, retention and graduation of project participants; and

(2) (4 points) The applicant intends to use the results of an evaluation to make programmatic changes based upon the results of project evaluation.

(Approved by the Office of Management and Budget under control number 1840–NEW5)

(Authority: 20 U.S.C. 1070a–14)

[61 FR 38537, July 24, 1996, as amended at 75 FR 65791, Oct. 26, 2010]

§ 646.22 How does the Secretary evaluate prior experience?

(a) In the case of an application described in § 646.20(a)(2)(i), the Secretary—

(1) Evaluates the applicant's performance under its expiring Student Support Services project;

(2) Uses the approved project objectives for the applicant's expiring Student Support Services grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of prior PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE points are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award PE points for the criterion specified in paragraph (e)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a

given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objectives related to paragraph (e)(2) of this section (Postsecondary retention) and paragraph (e)(3) of this section (Good academic standing).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (4 points) *Postsecondary retention.* Whether the applicant met or exceeded its objective regarding the participants served during the project year who continue to be enrolled in a program of postsecondary education from one academic year to the beginning of the next academic year or who complete a program of postsecondary education at the grantee institution during the academic year or transfer from a two-year institution to a four-year institution during the academic year.

(3) (4 points) *Good academic standing.* Whether the applicant met or exceeded its objective regarding the participants served during the project year who are in good academic standing at the grantee institution.

(4) (4 points) *Degree completion (for an applicant institution of higher education offering primarily a baccalaureate or higher degree).* Whether the applicant met or exceeded its objective regarding the current and prior participants receiving a baccalaureate degree at the grantee institution within the specified number of years.

(5) *Degree completion and transfer (for an applicant institution of higher education offering primarily an associate degree).* Whether the applicant met or exceeded its objectives regarding the current and prior participants at the grantee institution who—

(i) (2 points) Complete a degree or certificate within the number of years specified in the approved objective; and

(ii) (2 points) Transfer within the number of years specified in the approved objective to institutions of higher education that offer baccalaureate degrees.

(Approved by the Office of Management and Budget under control number 1840–NEW10)

(Authority: 20 U.S.C. 1070a–11; 1070a–14)

[75 FR 65792, Oct. 26, 2010]

§ 646.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233, for new grants; and

(2) 34 CFR 75.253, for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) $200,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

[61 FR 38537, July 24, 1996, as amended at 75 FR 65792, Oct. 26, 2010]

§ 646.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the FEDERAL REGISTER notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the FEDERAL REGISTER notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ''scoring error'' does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the FEDERAL REGISTER notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 646.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to the designated e-mail or Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the

competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW5)

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65792, Oct. 26, 2010]

Subpart D—What Conditions Must Be Met by a Grantee?

§ 646.30 What are allowable costs?

The cost principles that apply to the Student Support Services Program are in 2 CFR part 200, subpart E. Allowable costs include the following if they are reasonably related to the objectives of the project:

(a) Cost of remedial and special classes if—

(1) These classes are not otherwise available at the grantee institution;

(2) Are limited to eligible project participants; and

(3) Project participants are not charged tuition for classes paid for by the project.

(b) Courses in English language instruction for students of limited English proficiency if these classes are limited to eligible project participants and not otherwise available at the grantee institution.

(c) In-service training of project staff.

(d) Activities of an academic or cultural nature, such as field trips, special lectures, and symposiums, that have as their purpose the improvement of the participants' academic progress and personal development.

(e) Transportation and, with the prior approval of the Secretary, meals and lodging for participants and staff during approved educational and cultural activities sponsored by the project.

(f) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies for participant development, project administration, or project recordkeeping.

(g) Professional development travel for staff if directly related to the project's overall purpose and activities, except that these costs may not exceed four percent of total project salaries. The Secretary may adjust this percentage if the applicant demonstrates to the Secretary's satisfaction that a higher percentage is necessary and reasonable.

(h) Project evaluation that is directly related to assessing the project's impact on student achievement and improving the delivery of services.

(i) Grant aid to eligible students who—

(1) Are in their first two years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of title IV of the Act; or

(2) Have completed their first two years of postsecondary education and who are receiving Federal Pell Grants under subpart 1 of part A of title IV of the Act if the institution demonstrates to the satisfaction of the Secretary that—

(i) These students are at high risk of dropping out; and

(ii) It will first meet the needs of all its eligible first- and second-year students for services under this paragraph.

(j) Temporary housing during breaks in the academic year for—

(1) Students who are homeless children and youths or were formerly homeless children and youths; and

(2) Students who are foster care youth.

(Authority: 20 U.S.C. 1070a–14)

[61 FR 38537, July 24, 1996, 75 FR 65793, Oct. 26, 2010; 79 FR 76103, Dec. 19, 2014]

§ 646.31 What are unallowable costs?

Costs that may not be charged against a grant under the Student Support Services Program include, but are not limited to, the following:

(a) Costs involved in recruiting students for enrollment at the institution.

(b) Tuition, fees, stipends, and other forms of direct financial support, except for Grant aid under § 646.30(i) for staff or participants.

(c) Research not directly related to the evaluation or improvement of the project.

(d) Construction, renovation, or remodeling of any facilities.

(Authority: 20 U.S.C. 1070a–14)

[61 FR 38537, July 24, 1996, as amended at 75 FR 65794, Oct. 26, 2010]

§ 646.32 What other requirements must a grantee meet?

(a) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the FEDERAL REGISTER notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

(b) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each participant in the project when the individual is selected to participate. The grantee does not have to revalidate a participant's eligibility after the participant's initial selection.

(2) A grantee shall determine the low-income status of an individual on the basis of the documentation described in section 402A(e) of the Act.

(c) *Recordkeeping.* A grantee must maintain participant records that show—

(1) The basis for the grantee's determination that each participant is eligible to participate in the project under § 646.3;

(2) The grantee's basis for determining the academic need for each participant;

(3) The services that are provided to each participant;

(4) The performance and progress of each participant by cohort for the duration of the participant's attendance at the grantee institution; and

(5) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the SSS program.

(d) *Project director.* (1) A grantee must employ a full-time project director unless—

(i) The director is also administering one or two additional programs for disadvantaged students operated by the sponsoring institution or agency; or

(ii) The Secretary grants a waiver of this requirement.

(2) The grantee must give the project director sufficient authority to administer the project effectively.

(3) The Secretary waives the requirements in paragraph (d)(1) of this section if the applicant demonstrates that the project director will be able to effectively administer more than three programs and that this arrangement would promote effective coordination between the program and other Federal TRIO programs (sections 402B through 402F of the HEA) or similar programs funded through other sources.

(e) *Project coordination.* (1) The Secretary encourages grantees to coordinate project services with other programs for disadvantaged students operated by the grantee institution provided the Student Support Services grant funds are not used to support activities reasonably available to the general student population.

(2) To the extent practical, the grantee may share staff with programs serving similar populations provided the grantee maintains appropriate records of staff time and effort and does not commingle grant funds.

(3) Costs for special classes and events that would benefit Student Support Services students and participants in other programs for disadvantaged students must be proportionately divided among the benefiting projects.

(Approved by the Office of Management and Budget under control number 1840–NEW5)

(Authority: 20 U.S.C. 1070a–11 and 1070a)

[61 FR 38537, July 24, 1996, as amended at 75 FR 65794, Oct. 26, 2010]

§ 646.33 What are the matching requirements for a grantee that uses Student Support Services program funds for student grant aid?

(a) Except for grantees described in paragraph (b) of this section, a grantee that uses Student Support Services program funds for grant aid to eligible students described in § 646.30(i) must—

(1) Match the Federal funds used for grant aid, in cash, from non-Federal funds, in an amount that is not less than 33 percent of the total amount of Federal grant funds used for Grant aid; and

(2) Use no more than 20 percent of the Federal program funds awarded the grantee each year for grant aid.

(b) A grant recipient that is an institution of higher education eligible to receive funds under part A or B of title

III or title V of the HEA, as amended, is not required to match the Federal funds used for grant aid.

(Approved by the Office of Management and Budget under control number 1840–NEW10)

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65794, Oct. 26, 2010]

PART 647—RONALD E. MCNAIR POSTBACCALAUREATE ACHIEVEMENT PROGRAM

Subpart A—General

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AUTHORITY: 20 U.S.C. 1070a-11 and 1070a-15, unless otherwise noted.

SOURCE: 59 FR 43989, Aug. 25, 1994, unless otherwise noted.

Subpart A—General

§ 647.1 What is the Ronald E. McNair Postbaccalaureate Achievement Program?

The Ronald E. McNair Postbaccalaureate Achievement Program—referred to in these regulations as the McNair program—awards grants to institutions of higher education for projects designed to provide disadvantaged college students with effective preparation for doctoral study.

(Authority: 20 U.S.C. 1070a-15)

§ 647.2 Who is eligible for a grant?

Institutions of higher education and combinations of those institutions are eligible for grants to carry out McNair projects.

(Authority: 20 U.S.C. 1070a-11, 1070a-15, 1088, and 1141(a) and 1144a)

§ 647.3 Who is eligible to participate in a McNair project?

A student is eligible to participate in a McNair project if the student meets all the following requirements:

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States; or

(3) Is in the United States for other than a temporary purpose and provides evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(4) Is a permanent resident of Guam, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; or

(5) Is a resident of one of the Freely Associated States.

(b) Is currently enrolled in a degree program at an institution of higher education that participates in the student financial assistance programs authorized under Title IV of the HEA.

(c) Is—

(1) A low-income individual who is a first-generation college student;

(2) A member of a group that is underrepresented in graduate education; or

(3) A member of a group that is not listed in § 647.7 if the group is underrepresented in certain academic disciplines as documented by standard statistical references or other national survey data submitted to and accepted by the Secretary on a case-by-case basis.

(d) Has not enrolled in doctoral level study at an institution of higher education.

(Authority: 20 U.S.C. 1070a-15)

§ 647.4 What activities and services does a project provide?

(a) A McNair project must provide the following services and activities:

(1) Opportunities for research or other scholarly activities at the grantee institution or at graduate centers that are designed to provide students with effective preparation for doctoral study.

(2) Summer internships.

(3) Seminars and other educational activities designed to prepare students for doctoral study.

(4) Tutoring.

(5) Academic counseling.

(6) Assistance to students in securing admission to, and financial assistance for, enrollment in graduate programs.

(b) A McNair project may provide the following services and activities:

(1) Education or counseling services designed to improve the financial and economic literacy of students, including financial planning for postsecondary education.

(2) Mentoring programs involving faculty members at institutions of higher education, students, or a combination of faculty members and students.

(3) Exposure to cultural events and academic programs not usually available to disadvantaged students.

(4) Other activities designed to meet the purpose of the McNair Program in § 647.1.

(Authority: 20 U.S.C. 1070a–15)

[75 FR 65794, Oct. 26, 2010]

§ 647.5 How long is a project period?

A project period under the McNair program is five years.

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65794, Oct. 26, 2010]

§ 647.6 What regulations apply?

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except for §§ 75.215 through 75.221), 77, 79, 82, 84, 86, 97, 98, and 99.

(b) The regulations in this part 647.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1070a–11 and 1070a–15)

[59 FR 43989, Aug. 25, 1994, as amended at 75 FR 65794, Oct. 26, 2010; 79 FR 76103, Dec. 19, 2014]

§ 647.7 What definitions apply?

(a) *General definitions*. The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

Applicant	Grant
Application	Grantee
Budget	Project
Budget Period	Project Period
EDGAR	Public
Equipment	Secretary
Facilities	Supplies
Fiscal Year	

(b) *Other definitions*. The following definitions also apply to this part:

Different campus means a site of an institution of higher education that—

(1) Is geographically apart from the main campus of the institution;

(2) Is permanent in nature; and

(3) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential.

Different population means a group of individuals that an eligible entity desires to serve through an application for a grant under the McNair TRIO program and that—

(1) Is separate and distinct from any other population that the entity has applied for a grant to serve; or

(2) While sharing some of the same needs as another population that the eligible entity has applied for a grant to serve, has distinct needs for specialized services.

Financial and economic literacy means knowledge about personal financial decision-making, which may include but is not limited to knowledge about—

(1) Personal and family budget planning;

(2) Understanding credit-building principles to meet long-term and short-term goals (*e.g.*, loan to debt ratio, credit scoring, negative impacts on credit scores);

(3) Cost planning for postsecondary or postbaccalaureate education (e.g., spending, saving, personal budgeting);

(4) College cost of attendance (*e.g.*, public vs. private, tuition vs. fees, personal costs);

(5) Financial assistance (*e.g.*, searches, application processes, and differences between private and government loans, assistanceships); and

(6) Assistance in completing the Free Application for Federal Student Aid (FAFSA).

First-generation college student means—

(1) A student neither of whose natural or adoptive parents received a baccalaureate degree; or

(2) A student who, prior to the age of 18, regularly resided with and received support from only one parent, and whose supporting parent did not receive a baccalaureate degree.

(3) An individual who, prior to the age of 18, did not regularly reside with or receive support from a natural or an adoptive parent.

Graduate center means an institution of higher education as defined in sections 101 and 102 of the HEA; and that—

(1) Provides instruction in one or more programs leading to a doctoral degree;

(2) Maintains specialized library collections;

(3) Employs scholars engaged in research that relates to the subject areas of the center; and

(4) Provides outreach and consultative services on a national, regional or local basis.

Graduate education means studies beyond the bachelor's degree leading to a postbaccalaureate degree.

Groups underrepresented in graduate education. The following ethnic and racial groups are considered underrepresented in graduate education: Black (non-Hispanic), Hispanic, American Indian, Alaskan Native (as defined in section 7306 of the Elementary and Secondary Education Act of 1965, as amended (ESEA)), Native Hawaiians (as defined in section 7207 of the ESEA), and Native American Pacific Islanders (as defined in section 320 of the HEA).

HEA means the Higher Education Act of 1965, as amended.

Institution of higher education means an educational institution as defined in sections 101 and 102 of the HEA.

Low-income individual means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project. Poverty level income is determined by using criteria of poverty established by the Bureau of the Census of the U.S. Department of Commerce.

Research or scholarly activity means an educational activity that is more rigorous than is typically available to undergraduates in a classroom setting, that is definitive in its start and end dates, contains appropriate benchmarks for completion of various components, and is conducted under the guidance of an appropriate faculty member with experience in the relevant discipline.

Target population means the universe from which McNair participants will be selected. The universe may be expressed in terms of geography, type of institution, academic discipline, type of disadvantage, type of underrepresentation, or any other qualifying descriptor that would enable an applicant to more precisely identify the

kinds of eligible project participants they wish to serve.

(Authority: 20 U.S.C. 1070a–11, 1070a–15, and 1141)

[59 FR 43989, Aug. 25, 1994, as amended at 75 FR 65794, Oct. 26, 2010; 79 FR 76103, Dec. 19, 2014]

Subpart B—How Does One Apply for an Award?

§ 647.10 How many applications may an eligible applicant submit?

(a) An applicant may submit more than one application for McNair grants as long as each application describes a project that serves a different campus or a designated different population.

(b) For each grant competition, the Secretary designates, in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition, the different populations for which an eligible entity may submit a separate application.

(Authority: 20 U.S.C. 1070a–15; 20 U.S.C. 1221e–3))

[75 FR 65795, Oct. 26, 2010]

§ 647.11 What assurances must an applicant submit?

An applicant must submit as part of its application, assurances that—

(a) Each participant enrolled in the project will be enrolled in a degree program at an institution of higher education that participates in one or more of the student financial assistance programs authorized under Title IV of the HEA;

(b) Each participant given a summer research internship will have completed his or her sophomore year of study; and

(c)(1) At least two thirds of the students to be served will be low-income individuals who are first-generation college students; and

(2) The remaining students to be served will be members of groups underrepresented in graduate education.

(d) A student will not be served by more than one McNair project at any one time and that the McNair project will collaborate with other McNair and SSS projects and other State and institutional programs at the grantee-institution, including those supporting undergraduate research, so that more students can be served.

(Authority: 20 U.S.C. 1070a–15)

[59 FR 43989, Aug. 25, 1994. Redesignated and amended at 75 FR 65795, Oct. 26, 2010]

Subpart C—How Does the Secretary Make a Grant?

§ 647.20 How does the Secretary decide which new grants to make?

(a) The Secretary evaluates an application for a new grant as follows:

(1)(i) The Secretary evaluates an application on the basis of the selection criteria in § 647.21.

(ii) The maximum score for all the criteria in § 647.21 is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(2)(i) For an application from an applicant who has carried out a McNair project in the fiscal year immediately preceding the fiscal year for which the applicant is applying, the Secretary evaluates the applicant's prior experience of high quality service delivery on the basis of the outcome criteria in § 647.22.

(ii) The maximum total score for all the criteria in § 647.22 is 15 points. The maximum score for each criterion is indicated in parentheses with the criterion.

(iii) If an applicant described in paragraph (a)(2)(i) of this section applies for more than one new grant in the same fiscal year, the Secretary applies the criteria in § 647.22 to a project that seeks to continue support for an existing McNair project on that campus.

(iv) The Secretary evaluates the PE of an applicant for each of the three project years that the Secretary designates in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition.

(v) An applicant may earn up to 15 PE points for each of the designated project years for which annual performance report data are available.

(vi) The final PE score is the average of the scores for the three project years assessed.

(b) The Secretary makes new grants in rank order on the basis of the total scores received by applications under paragraphs (a)(1) through (a)(3) of this section.

(c)(1) If the total scores of two or more applications are the same and there are insufficient funds for these applications after the approval of higher-ranked applications, the Secretary uses the remaining funds to achieve an equitable geographic distribution of all new projects.

(2) In making an equitable geographic distribution of new projects, the Secretary considers only the locations of new projects.

(d) The Secretary does not make a new grant to an applicant if the applicant's prior project involved the fraudulent use of program funds.

(Authority: 20 U.S.C. 1070a–11 and 1070a–15)

[59 FR 43989, Aug. 25, 1994, as amended at 75 FR 65795, Oct. 26, 2010]

§ 647.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant:

(a) *Need* (16 Points). The Secretary reviews each application to determine the extent to which the applicant can clearly and definitively demonstrate the need for a McNair project to serve the target population. In particular, the Secretary looks for information that clearly defines the target population; describes the academic, financial and other problems that prevent potentially eligible project participants in the target population from completing baccalaureate programs and continuing to postbaccalaureate programs; and demonstrates that the project's target population is underrepresented in graduate education, doctorate degrees conferred and careers where a doctorate is a prerequisite.

(b) *Objectives* (9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under paragraph (a) of this section, and attainable, given the project's plan of operation, budget, and other resources:

(1) (2 points) Research or scholarly activity.

(2) (3 points) Enrollment in a graduate program.

(3) (2 points) Continued enrollment in graduate study.

(4) (2 points) Doctoral degree attainment.

(c) *Plan of Operation* (44 points). The Secretary reviews each application to determine the quality of the applicant's plans of operation, including—

(1) (4 points) The plan for identifying, recruiting and selecting participants to be served by the project, including students enrolled in the Student Support Services program;

(2) (4 points) The plan for assessing individual participant needs and for monitoring the academic growth of participants during the period in which the student is a McNair participant;

(3) (5 points) The plan for providing high quality research and scholarly activities in which participants will be involved;

(4) (5 points) The plan for involving faculty members in the design of research activities in which students will be involved;

(5) (5 points) The plan for providing internships, seminars, and other educational activities designed to prepare undergraduate students for doctoral study;

(6) (5 points) The plan for providing individual or group services designed to enhance a student's successful entry into postbaccalaureate education;

(7) (3 points) The plan to inform the institutional community of the goals and objectives of the project;

(8) (8 points) The plan to ensure proper and efficient administration of the project, including, but not limited to matters such as financial management, student records management, personnel management, the organizational structure, and the plan for coordinating the McNair project with other programs for disadvantaged students; and

(9) (5 points) The follow-up plan that will be used to track the academic and career accomplishments of participants after they are no longer participating in the McNair project.

(d) *Quality of key personnel* (9 points). The Secretary evaluates the quality of

key personnel the applicant plans to use on the project on the basis of the following:

(1)(i) The job qualifications of the project director.

(ii) The job qualifications of each of the project's other key personnel.

(iii) The quality of the project's plan for employing highly qualified persons, including the procedures to be used to employ members of groups underrepresented in higher education, including Blacks, Hispanics, American Indians, Alaska Natives, Asian Americans and Pacific Islanders (including Native Hawaiians).

(2) In evaluating the qualifications of a person, the Secretary considers his or her experience and training in fields related to the objectives of the project.

(e) *Adequacy of the resources and budget* (15 points). The Secretary evaluates the extent to which—

(1) The applicant's proposed allocation of resources in the budget is clearly related to the objectives of the project;

(2) Project costs and resources, including facilities, equipment, and supplies, are reasonable in relation to the objectives and scope of the project; and

(3) The applicant's proposed commitment of institutional resources to the McNair participants, as for example, the commitment of time from institutional research faculty and the waiver of tuition and fees for McNair participants engaged in summer research projects.

(f) *Evaluation plan* (7 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project's objectives;

(2) Provide for the applicant to determine, in specific and measurable ways, the success of the project in—

(i) Making progress toward achieving its objectives (a formative evaluation); and

(ii) Achieving its objectives at the end of the project period (a summative evaluation); and

(3) Provide for a description of other project outcomes, including the use of quantifiable measures, if appropriate.

(Approved by the Office of Management and Budget under control number 1840–NEW6)

(Authority: 20 U.S.C. 1070a–15)

[59 FR 43989, Aug. 25, 1994, as amended at 75 FR 65795, Oct. 26, 2010]

§ 647.22 How does the Secretary evaluate prior experience?

(a) In the case of an applicant described in § 647.20(a)(2)(i), the Secretary—

(1) Evaluates an applicant's performance under its expiring McNair project;

(2) Uses the approved project objectives for the applicant's expiring McNair grant and the information the applicant submitted in its annual performance reports (APRs) to determine the number of PE points; and

(3) May adjust a calculated PE score or decide not to award PE points if other information such as audit reports, site visit reports, and project evaluation reports indicates the APR data used to calculate PE are incorrect.

(b) The Secretary does not award PE points for a given year to an applicant that does not serve at least 90 percent of the approved number of participants. For purposes of this section, the approved number of participants is the total number of participants the project would serve as agreed upon by the grantee and the Secretary.

(c) The Secretary does not award any PE points for the criteria specified in paragraph (e)(1) of this section (Number of participants) if the applicant did not serve at least the approved number of participants.

(d) The Secretary uses the approved number of participants, or the actual number of participants served in a given year if greater than the approved number of participants, as the denominator for calculating whether the applicant has met its approved objective related to paragraph (e)(2) of this section (Research and scholarly activities).

(e) For purposes of the PE evaluation of grants awarded after January 1, 2009, the Secretary evaluates the applicant's

PE on the basis of the following outcome criteria:

(1) (3 points) *Number of participants.* Whether the applicant provided services to no less than the approved number of participants.

(2) (3 points) *Research or scholarly activities.* Whether the applicant met or exceeded its objective for providing participants served during the project year with appropriate research and scholarly activities each academic year.

(3) (3 points) *Graduate school enrollment.* Whether the applicant met or exceeded its objective with regard to the acceptance and enrollment in graduate programs of participants served during the project year who complete the baccalaureate program during the academic year.

(4) (4 points) *Continued enrollment in graduate school.* Whether the applicant met or exceeded its objective with regard to the continued enrollment in graduate school of prior participants.

(5) (2 points) *Doctoral degree attainment.* Whether the applicant met or exceeded its objective with regard to the attainment of doctoral level degrees of prior participants in the specified number of years.

(Approved by the Office of Management and Budget under control number 1840–NEW11)

(Authority: 20 U.S.C. 1070a–11 and 1070a–15)

[75 FR 65796, Oct. 26, 2010]

§ 647.23 How does the Secretary set the amount of a grant?

(a) The Secretary sets the amount of a grant on the basis of—

(1) 34 CFR 75.232 and 75.233 for new grants; and

(2) 34 CFR 75.253 for the second and subsequent years of a project period.

(b) If the circumstances described in section 402A(b)(3) of the HEA exist, the Secretary uses the available funds to set the amount of the grant at the lesser of—

(1) $200,000; or

(2) The amount requested by the applicant.

(Authority: 20 U.S.C. 1070a–11)

[59 FR 43989, Aug. 25, 1994, as amended at 75 FR 65796, Oct. 26, 2010]

§ 647.24 What is the review process for unsuccessful applicants?

(a) *Technical or administrative error for applications not reviewed.* (1) An applicant whose grant application was not evaluated during the competition may request that the Secretary review the application if—

(i) The applicant has met all of the application submission requirements included in the FEDERAL REGISTER notice inviting applications and the other published application materials for the competition; and

(ii) The applicant provides evidence demonstrating that the Department or an agent of the Department made a technical or administrative error in the processing of the submitted application.

(2) A technical or administrative error in the processing of an application includes—

(i) A problem with the system for the electronic submission of applications that was not addressed in accordance with the procedures included in the FEDERAL REGISTER notice inviting applications for the competition;

(ii) An error in determining an applicant's eligibility for funding consideration, which may include, but is not limited to—

(A) An incorrect conclusion that the application was submitted by an ineligible applicant;

(B) An incorrect conclusion that the application exceeded the published page limit;

(C) An incorrect conclusion that the applicant requested funding greater than the published maximum award; or

(D) An incorrect conclusion that the application was missing critical sections of the application; and

(iii) Any other mishandling of the application that resulted in an otherwise eligible application not being reviewed during the competition.

(3)(i) If the Secretary determines that the Department or the Department's agent made a technical or administrative error, the Secretary has the application evaluated and scored.

(ii) If the total score assigned the application would have resulted in funding of the application during the competition and the program has funds

available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c) of this section.

(b) *Administrative or scoring error for applications that were reviewed.* (1) An applicant that was not selected for funding during a competition may request that the Secretary conduct a second review of the application if—

(i) The applicant provides evidence demonstrating that the Department, an agent of the Department, or a peer reviewer made an administrative or scoring error in the review of its application; and

(ii) The final score assigned to the application is within the funding band described in paragraph (d) of this section.

(2) An administrative error relates to either the PE points or the scores assigned to the application by the peer reviewers.

(i) For PE points, an administrative error includes mathematical errors made by the Department or the Department's agent in the calculation of the PE points or a failure to correctly add the earned PE points to the peer reviewer score.

(ii) For the peer review score, an administrative error is applying the wrong peer reviewer scores to an application.

(3)(i) A scoring error relates only to the peer review process and includes errors caused by a reviewer who, in assigning points—

(A) Uses criteria not required by the applicable law or program regulations, the FEDERAL REGISTER notice inviting applications, the other published application materials for the competition, or guidance provided to the peer reviewers by the Secretary; or

(B) Does not consider relevant information included in the appropriate section of the application.

(ii) The term ''scoring error'' does not include—

(A) A peer reviewer's appropriate use of his or her professional judgment in evaluating and scoring an application;

(B) Any situation in which the applicant did not include information needed to evaluate its response to a specific selection criterion in the appropriate section of the application as stipulated in the FEDERAL REGISTER notice inviting applications or the other published application materials for the competition; or

(C) Any error by the applicant.

(c) *Procedures for the second review.* (1) To ensure the timely awarding of grants under the competition, the Secretary sets aside a percentage of the funds allotted for the competition to be awarded after the second review is completed.

(2) After the competition, the Secretary makes new awards in rank order as described in § 647.20 based on the available funds for the competition minus the funds set aside for the second review.

(3) After the Secretary issues a notification of grant award to successful applicants, the Secretary notifies each unsuccessful applicant in writing as to the status of its application and the funding band for the second review and provides copies of the peer reviewers' evaluations of the applicant's application and the applicant's PE score, if applicable.

(4) An applicant that was not selected for funding following the competition as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section, may request a second review if the applicant demonstrates that the Department, the Department's agent, or a peer reviewer made an administrative or scoring error as provided in paragraph (b) of this section.

(5) An applicant whose application was not funded after the first review as described in paragraph (c)(2) of this section and whose application received a score within the funding band as described in paragraph (d) of this section has at least 15 calendar days after receiving notification that its application was not funded in which to submit a written request for a second review in accordance with the instructions and due date provided in the Secretary's written notification.

(6) An applicant's written request for a second review must be received by the Department or submitted electronically to a designated e-mail or

Web address by the due date and time established by the Secretary.

(7) If the Secretary determines that the Department or the Department's agent made an administrative error that relates to the PE points awarded, as described in paragraph (b)(2)(i) of this section, the Secretary adjusts the applicant's PE score to reflect the correct number of PE points. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(8) If the Secretary determines that the Department, the Department's agent or the peer reviewer made an administrative error that relates to the peer reviewers' score(s), as described in paragraph (b)(2)(ii) of this section, the Secretary adjusts the applicant's peer reviewers' score(s) to correct the error. If the adjusted score assigned to the application would have resulted in funding of the application during the competition and the program has funds available, the Secretary funds the application prior to the re-ranking of applications based on the second peer review of applications described in paragraph (c)(9) of this section.

(9) If the Secretary determines that a peer reviewer made a scoring error, as described in paragraph (b)(3) of this section, the Secretary convenes a second panel of peer reviewers in accordance with the requirements in section 402A(c)(8)(C)(iv)(III) of the HEA.

(10) The average of the peer reviewers' scores from the second peer review are used in the second ranking of applications. The average score obtained from the second peer review panel is the final peer reviewer score for the application and will be used even if the second review results in a lower score for the application than that obtained in the initial review.

(11) For applications in the funding band, the Secretary funds these applications in rank order based on adjusted scores and the available funds that have been set aside for the second review of applications.

(d) *Process for establishing a funding band.* (1) For each competition, the Secretary establishes a funding band for the second review of applications.

(2) The Secretary establishes the funding band for each competition based on the amount of funds the Secretary has set aside for the second review of applications.

(3) The funding band is composed of those applications—

(i) With a rank-order score before the second review that is below the lowest score of applications funded after the first review; and

(ii) That would be funded if the Secretary had 150 percent of the funds that were set aside for the second review of applications for the competition.

(e) *Final decision.* (1) The Secretary's determination of whether the applicant has met the requirements for a second review and the Secretary's decision on re-scoring of an application are final and not subject to further appeal or challenge.

(2) An application that scored below the established funding band for the competition is not eligible for a second review.

(Approved by the Office of Management and Budget under control number 1840–NEW6)

(Authority: 20 U.S.C. 1070a–11)

[75 FR 65796, Oct. 26, 2010]

Subpart D—What Conditions Must Be Met by a Grantee?

§ 647.30 What are allowable costs?

The cost principles in 2 CFR part 200, subpart E, may include the following costs reasonably related to carrying out a McNair project:

(a) Activities of an academic or scholarly nature, such as trips to institutions of higher education offering doctoral programs, and special lectures, symposia, and professional conferences, which have as their purpose the encouragement and preparation of project participants for doctoral studies.

(b) Stipends of up to $2,800 per year for students engaged in research internships, provided that the student has completed the sophomore year of study at an eligible institution before the internship begins.

(c) Necessary tuition, room and board, and transportation for students engaged in research internships during the summer.

(d) Purchase, lease, or rental of computer hardware, software, and other equipment, service agreements for such equipment, and supplies for participant development, project administration, or project recordkeeping.

[59 FR 43989, Aug. 25, 1994, as amended at 75 FR 65797, Oct. 26, 2010; 79 FR 76103, Dec. 19, 2014]

§ 647.31 What are unallowable costs?

Costs that may not be charged against a grant under this program include the following:

(a) Payment of tuition, stipends, test preparation and fees or any other form of student financial support to staff or participants not expressly allowed under § 647.30.

(b) Construction, renovation, and remodeling of any facilities.

(Authority: 20 U.S.C. 1070a–5)

§ 647.32 What other requirements must a grantee meet?

(a) *Number of Participants.* For each year of the project period, a grantee must serve at least the number of participants that the Secretary identifies in the FEDERAL REGISTER notice inviting applications for a competition. Through this notice, the Secretary also provides the minimum and maximum grant award amounts for the competition.

(b) *Eligibility of participants.* (1) A grantee shall determine the eligibility of each student before the student is selected to participate. A grantee does not have to redetermine a student's eligibility once the student has been determined eligible in accordance with the provisions of § 647.3; and

(2) A grantee shall determine the status of a low-income individual on the basis of the documentation described in section 402A(e) of the HEA.

(c) *Recordkeeping.* For each student, a grantee shall maintain a record of—

(1) The basis for the grantee's determination that the student is eligible to participate in the project under § 647.3;

(2) The individual needs assessment;

(3) The services provided to the participant; and

(4) The specific educational progress made by the student during and after participation in the project.

(5) To the extent practicable, any services the participant receives during the project year from another Federal TRIO program or another federally funded program that serves populations similar to those served under the McNair program.

(d) *Other reporting requirements.* A grantee shall submit to the Secretary reports and other information as requested in order to demonstrate program effectiveness.

(e) *Project director.* A grantee shall designate a project director who has—

(1) Authority to conduct the project effectively; and

(2) Appropriate professional qualifications, experience and administrative skills to effectively fulfill the objectives of the project.

(Approved by the Office of Management and Budget under control number 1840–NEW11)

(Authority: 20 U.S.C. 1070a–15)

[59 FR 43989, Aug. 25, 1994, as amended at 75 FR 65797, Oct. 26, 2010]

PART 648—GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED

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APPENDIX TO PART 648—ACADEMIC AREAS

AUTHORITY: 20 U.S.C. 1135–1135e, unless otherwise noted.

SOURCE: 58 FR 65842, Dec. 16, 1993, unless otherwise noted.

Subpart A—General

§ 648.1 What is the Graduate Assistance in Areas of National Need program?

The Graduate Assistance in Areas of National Need program provides fellowships through academic departments of institutions of higher education to assist graduate students of superior ability who demonstrate financial need.

(Authority: 20 U.S.C. 1135, 1135a)

[58 FR 65842, Dec. 16, 1993, as amended at 64 FR 13487, Mar. 18, 1999]

§ 648.2 Who is eligible for a grant?

(a) The Secretary awards grants to the following:

(1) Any academic department of an institution of higher education that provides a course of study that—

(i) Leads to a graduate degree in an area of national need; and

(ii) Has been in existence for at least four years at the time of an application for a grant under this part.

(2) An academic department of an institution of higher education that—

(i) Satisfies the requirements of paragraph (a)(1) of this section; and

(ii) Submits a joint application with one or more eligible nondegree-granting institutions that have formal arrangements for the support of doctoral dissertation research with one or more degree-granting institutions.

(b) A formal arrangement under paragraph (a)(2)(ii) of this section is a written agreement between a degree-granting institution and an eligible nondegree-granting institution whereby the degree-granting institution accepts students from the eligible nondegree-granting institution as doctoral degree candidates with the intention of awarding these students doctorates in an area of national need.

(c) The Secretary does not award a grant under this part for study at a school or department of divinity.

(Authority: 20 U.S.C. 1135, 1135a)

§ 648.3 What activities may the Secretary fund?

(a) The Secretary awards grants to institutions of higher education to fund fellowships in one or more areas of national need.

(b)(1) For the purposes of this part, the Secretary designates areas of national need from the academic areas listed in the appendix to this part or from the resulting inter-disciplines.

(2) The Secretary announces these areas of national need in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1135, 1135a)

§ 648.4 What is included in the grant?

Each grant awarded by the Secretary consists of the following:

(a) The stipends paid by the Secretary through the institution of higher education to fellows. The stipend provides an allowance to a fellow for the fellow's (and his or her dependents') subsistence and other expenses.

(b) The institutional payments paid by the Secretary to the institution of higher education to be applied against each fellow's tuition, fees, and the costs listed in § 648.62(b).

(Authority: 20 U.S.C. 1135c, 1135d)

§ 648.5 What is the amount of a grant?

(a) The amount of a grant to an academic department may not be less than $100,000 and may not be more than $750,000 in a fiscal year.

(b) In any fiscal year, no academic department may receive more than $750,000 as an aggregate total of new and continuing grants.

(Authority: 20 U.S.C. 1135)

§ 648.6 What is the duration of a grant?

The duration of a grant awarded under this part is a maximum of three annual budget periods during a three-year (36-month) project period.

(Authority: 20 U.S.C. 1135)

§ 648.7 What is the institutional matching contribution?

An institution shall provide, from non-Federal funds, an institutional matching contribution equal to at least 25 percent of the amount of the grant received under this part, for the uses indicated in § 648.63.

(Authority: 20 U.S.C. 1135b, 1135c)

§ 648.8 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) [Reserved]

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) [Reserved]

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1135)

[58 FR 65842, Dec. 16, 1993, as amended at 79 FR 76103, Dec. 19, 2014]

§ 648.9 What definitions apply?

(a) *General definitions*. The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

Applicant	Equipment
Application	Grant
Award	Nonprofit
Budget	Project period
Budget period	Secretary
Department	Supplies
EDGAR	

(b) *Other definitions*. The following definitions also apply to this part:

Academic department means any department, program, unit, orany other administrative subdivision of an institution of higher education that—

(i) Directly administers or supervises post-baccalaureate instruction in a specific discipline; and

(ii) Has the authority to award academic course credit acceptable to meet degree requirements at an institution of higher education.

Academic field means an area of study in an academic department within an institution of higher education other than a school or department of divinity.

Academic year means the 12-month period commencing with the fall instructional term of the institution.

Application period means the period in which the Secretary solicits applications for this program.

Discipline means a branch of instruction or learning.

Eligible non-degree granting institution means any institution that—

(i) Conducts post-baccalaureate academic programs of study but does not award doctoral degrees in an area of national need;

(ii) Is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from tax under section 501(a) of the Code;

(iii) Is organized and operated substantially to conduct scientific and cultural research and graduate training programs;

(iv) Is not a private foundation;

(v) Has academic personnel for instruction and counseling who meet the standards of the institution of higher education in which the students are enrolled; and

(vi) Has necessary research resources not otherwise readily available in the institutions in which students are enrolled.

Fees mean non-refundable charges paid by a graduate student for services, materials, and supplies that are not included within the tuition charged by the institution in which the student is enrolled.

Fellow means a recipient of a fellowship under this part.

Fellowship means an award made by an institution of higher education to an individual for graduate study under this part at the institution of higher education.

Financial need means the fellow's financial need as determined under title IV, part F, of the HEA for the period of the fellow's enrollment in the approved academic field of study for which the fellowship was awarded.

General operational overhead means non-instructional expenses incurred by an academic department in the normal administration and conduct of its academic program, including the costs of supervision, recruitment, capital outlay, debt service, indirect costs, or any other costs not included in the determination of tuition and non-refundable fee charges.

Graduate student means an individual enrolled in a program of post-baccalaureate study at an institution of higher education.

Graduate study means any program of postbaccalaureate study at an institution of higher education.

HEA means the Higher Education Act of 1965, as amended.

Highest possible degree available means a doctorate in an academic field or a master's degree, professional degree, or other post-baccalaureate degree if a doctorate is not available in that academic field.

Institution of higher education (Institution) means an institution of higher education, other than a school or department of divinity, as defined in section 1201(a) of the HEA.

Inter-discipline means a course of study that involves academic fields in two or more disciplines.

Minority means Alaskan Native, American Indian, Asian-American, Black (African-American), Hispanic American, Native Hawaiian, or Pacific Islander.

Multi-disciplinary application means an application that requests fellowships for more than a single academic department in areas of national need designated as priorities by the Secretary under this part.

Project means the activities necessary to assist, whether from grant funds or institutional resources, fellows in the successful completion of their designated educational programs.

Satisfactory progress means that a fellow meets or exceeds the institution's criteria and standards established for a graduate student's continued status as an applicant for the graduate degree in the academic field for which the fellowship was awarded.

School or department of divinity means an institution, or an academic department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation or to prepare them to teach theological subjects.

Students from traditionally underrepresented backgrounds mean women and minorities who traditionally are underrepresented in areas of national need as designated by the Secretary.

Supervised training means training provided to fellows under the guidance and direction of faculty in the academic department.

Tuition means the charge for instruction by the institution of higher education in which the fellow is enrolled.

Underrepresented in areas of national need means proportionate representation as measured by degree recipients, that is less than the proportionate representation in the general population, as indicated by—

(i) The most current edition of the Department's *Digest of Educational Statistics;*

(ii) The National Research Council's *Doctorate Recipients from United States Universities;*

(iii) Other standard statistical references, as announced annually in the FEDERAL REGISTER notice inviting applications for new awards under this program; or

(iv) As documented by national survey data submitted to and accepted by the Secretary on a case-by-case basis.

(Authority: 20 U.S.C. 1135–1135d)

[58 FR 65842, Dec. 16, 1993, as amended at 79 FR 76103, Dec. 19, 2014]

Subpart B—How Does an Institution of Higher Education Apply for a Grant?

§ 648.20 How does an institution of higher education apply for a grant?

(a) To apply for a grant under this part, an institution of higher education shall submit an application that responds to the appropriate selection criteria in § 648.31.

(b) In addition, an application for a grant must—

(1) Describe the current academic program for which the grant is sought;

(2) Request a specific number of fellowships to be awarded on a full-time basis for the academic year covered under the grant in each academic field included in the application;

(3) Set forth policies and procedures to ensure that in making fellowship awards under this part the institution will seek talented students from traditionally underrepresented backgrounds;

(4) Set forth policies and procedures to assure that in making fellowship awards under this part the institution will make awards to individuals who satisfy the requirements of § 648.40;

(5) Set forth policies and procedures to ensure that Federal funds made available under this part for any fiscal year will be used to supplement and, to the extent practical, increase the funds that otherwise would be made available for the purposes of this part and, in no case, to supplant those funds;

(6) Provide assurances that the institution will provide the institutional matching contribution described in § 648.7;

(7) Provide assurances that, in the event that funds made available to the academic department under this part are insufficient to provide the assistance due a student under the commitment entered into between the academic department and the student, the academic department will, from any funds available to it, fulfill the commitment to the student;

(8) Provide that the institution will comply with the requirements in subpart F; and

(9) Provide assurances that the academic department will provide at least one year of supervised training in instruction to students receiving fellowships under this program.

(c) In any application period, an academic department may not submit more than one application for new awards.

(Approved by the Office of Management and Budget under control number 1840–0604)

(Authority: 20 U.S.C. 1135b)

[58 FR 65842, Dec. 16, 1993, as amended at 64 FR 13487, Mar. 18, 1999]

Subpart C—How Does the Secretary Make an Award?

§ 648.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 648.31.

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1135, 1135b)

[58 FR 65842, Dec. 16, 1993, as amended at 70 FR 13375, Mar. 21, 2005]

§ 648.31 What selection criteria does the Secretary use?

The Secretary evaluates an application on the basis of the criteria in this section.

(a) *Meeting the purposes of the program.* The Secretary reviews each application to determine how well the project will meet the purposes of the program, including the extent to which—

(1) The applicant's general and specific objectives for the project are realistic and measurable;

(2) The applicant's objectives for the project seek to sustain and enhance the capacity for teaching and research at the institution and at State, regional, or national levels;

(3) The applicant's objectives seek to institute policies and procedures to ensure the enrollment of talented graduate students from traditionally underrepresented backgrounds; and

(4) The applicant's objectives seek to institute policies and procedures to ensure that it will award fellowships to individuals who satisfy the requirements of § 648.40.

(b) *Extent of need for the project.* The Secretary considers the extent to which a grant under the program is needed by the academic department by considering—

(1) How the applicant identified the problems that form the specific needs of the project;

(2) The specific problems to be resolved by successful realization of the goals and objectives of the project; and

(3) How increasing the number of fellowships will meet the specific and general objectives of the project.

(c) *Quality of the graduate academic program.* The Secretary reviews each application to determine the quality of the current graduate academic program for which project funding is sought, including—

(1) The course offerings and academic requirements for the graduate program;

(2) The qualifications of the faculty, including education, research interest, publications, teaching ability, and accessibility to graduate students;

(3) The focus and capacity for research; and

(4) Any other evidence the applicant deems appropriate to demonstrate the quality of its academic program.

(d) *Quality of the supervised teaching experience.* The Secretary reviews each application to determine the quality of the teaching experience the applicant plans to provide fellows under this program, including the extent to which the project—

(1) Provides each fellow with the required supervised training in instruction;

(2) Provides adequate instruction on effective teaching techniques;

(3) Provides extensive supervision of each fellow's teaching performance; and

(4) Provides adequate and appropriate evaluation of the fellow's teaching performance.

(e) *Recruitment plan.* The Secretary reviews each application to determine the quality of the applicant's recruitment plan, including—

(1) How the applicant plans to identify, recruit, and retain students from traditionally underrepresented backgrounds in the academic program for which fellowships are sought;

(2) How the applicant plans to identify eligible students for fellowships;

(3) The past success of the academic department in enrolling talented graduate students from traditionally underrepresented backgrounds; and

(4) The past success of the academic department in enrolling talented graduate students for its academic program.

(f) *Project administration.* The Secretary reviews the quality of the proposed project administration, including—

(1) How the applicant will select fellows, including how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, religion, gender, age, or disabling condition;

(2) How the applicant proposes to monitor whether a fellow is making satisfactory progress toward the degree for which the fellowship has been awarded;

(3) How the applicant proposes to identify and meet the academic needs of fellows;

(4) How the applicant proposes to maintain enrollment of graduate students from traditionally underrepresented backgrounds; and

(5) The extent to which the policies and procedures the applicant proposes to institute for administering the project are likely to ensure efficient and effective project implementation, including assistance to and oversight of the project director.

(g) *Institutional commitment*. The Secretary reviews each application for evidence that—

(1) The applicant will provide, from any funds available to it, sufficient funds to support the financial needs of the fellows if the funds made available under the program are insufficient;

(2) The institution's social and academic environment is supportive of the academic success of students from traditionally underrepresented backgrounds on the applicant's campus;

(3) Students receiving fellowships under this program will receive stipend support for the time necessary to complete their courses of study, but in no case longer than 5 years; and

(4) The applicant demonstrates a financial commitment, including the nature and amount of the institutional matching contribution, and other institutional commitments that are likely to ensure the continuation of project activities for a significant period of time following the period in which the project receives Federal financial assistance.

(h) *Quality of key personnel*. The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of other key personnel to be used in the project;

(3) The time commitment of key personnel, including the project director, to the project; and

(4) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan.

(i) *Budget*. The Secretary reviews each application to determine the extent to which—

(1) The applicant shows a clear understanding of the acceptable uses of program funds; and

(2) The costs of the project are reasonable in relation to the objectives of the project.

(j) *Evaluation plan*. The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Relate to the specific goals and measurable objectives of the project;

(2) Assess the effect of the project on the students receiving fellowships under this program, including the effect on persons of different racial and ethnic backgrounds, genders, and ages, and on persons with disabilities who are served by the project;

(3) List both process and product evaluation questions for each project activity and outcome, including those of the management plan;

(4) Describe both the process and product evaluation measures for each project activity and outcome;

(5) Describe the data collection procedures, instruments, and schedules for effective data collection;

(6) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis; and

(7) Include a time-line chart that relates key evaluation processes and benchmarks to other project component processes and benchmarks.

(k) *Adequacy of resources*. The Secretary reviews each application to determine the adequacy of the resources that the applicant makes available to graduate students receiving fellowships under this program, including facilities, equipment, and supplies.

(Approved by the Office of Management and Budget under control number 1840–0604)

(Authority: 20 U.S.C. 1135–1135c)

[58 FR 65842, Dec. 16, 1993, as amended at 70 FR 13375, Mar. 21, 2005]

§ 648.32 What additional factors does the Secretary consider?

(a) *Continuation awards.* (1) Before funding new applications, the Secretary gives preference to grantees requesting their second or third year of funding.

(2) If appropriations for this program are insufficient to fund all continuation grantees for the second and third years at the approved funding level, the Secretary prorates the available funds, if any, among the continuation grantees and, if necessary, awards continuation grants of less than $100,000.

(b) *Equitable distribution.* In awarding grants, the Secretary will, consistent with an allocation of awards based on the quality of competing applications, ensure the following:

(1) An equitable geographic distribution of grants to eligible applicant institutions of higher education.

(2) An equitable distribution of grants to eligible applicant public and eligible applicant private institutions of higher education.

(Authority: 20 U.S.C. 1135–1135c)

§ 648.33 What priorities and absolute preferences does the Secretary establish?

(a) For each application period, the Secretary establishes as an area of national need and gives absolute preference to one or more of the general disciplines and sub-disciplines listed as priorities in the appendix to this part or the resulting interdisciplines.

(b) The Secretary announces the absolute preferences in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1135, 1135a)

Subpart D—How Are Fellows Selected?

§ 648.40 How does an academic department select fellows?

(a) In selecting individuals to receive fellowships, an academic department shall consider only individuals who—

(1) Are currently enrolled as graduate students, have been accepted at the grantee institution, or are enrolled or accepted as graduate students at an eligible nondegree-granting institution;

(2) Are of superior ability;

(3) Have an excellent academic record;

(4) Have financial need;

(5) Are planning to pursue the highest possible degree available in their course of study;

(6) Are planning a career in teaching or research;

(7) Are not ineligible to receive assistance under 34 CFR 75.60; and

(8)(i) Are United States citizens or nationals;

(ii) Are permanent residents of the United States;

(iii) Provide evidence from the Immigration and Naturalization Service that they are in the United States for other than a temporary purpose with the intention of becoming permanent residents; or

(iv) Are citizens of any one of the Freely Associated States.

(b) An individual who satisfies the eligibility criteria in paragraph (a) of this section, but who attends an institution that does not offer the highest possible degree available in the individual's course of study, is eligible for a fellowship if the individual plans to attend subsequently an institution that offers this degree.

(Authority: 20 U.S.C. 1135, 1135b)

[58 FR 65842, Dec. 16, 1993, as amended at 64 FR 13487, Mar. 18, 1999]

§ 648.41 How does an individual apply for a fellowship?

An individual shall apply directly to an academic department of an institution of higher education that has received a grant.

(Authority: 20 U.S.C. 1135, 1135c)

Subpart E—How Does the Secretary Distribute Funds?

§ 648.50 What are the Secretary's payment procedures?

(a) The Secretary awards to the institution of higher education a stipend and an institutional payment for each individual awarded a fellowship under this part.

(b) If an academic department of an institution of higher education is unable to use all of the amounts available

to it under this part, the Secretary reallots the amounts not used to academic departments of other institutions of higher education for use in the academic year following the date of the reallotment.

(Authority: 20 U.S.C. 1135a, 1135c, 1135d)

§ 648.51 What is the amount of a stipend?

(a) For a fellowship initially awarded for an academic year prior to the academic year 1993–94, the institution shall pay the fellow a stipend in an amount that equals the fellow's financial need or $10,000, whichever is less.

(b) For a fellowship initially awarded for the academic year 1993–94, or any succeeding academic year, the institution shall pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation graduate fellowships, except that this amount must be adjusted as necessary so as not to exceed the fellow's demonstrated level of financial need as determined under part F of title IV of the HEA. The Secretary announces the amount of the stipend in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1135c)

[58 FR 65842, Dec. 16, 1993, as amended at 64 FR 13487, Mar. 18, 1999]

§ 648.52 What is the amount of the institutional payment?

(a) For academic year 1998–1999, the amount of the institutional payment received by an institution of higher education for each student awarded a fellowship at the institution is $10,222. Thereafter, the Secretary adjusts the amount of the institutional payment annually in accordance with inflation as determined by the United States Department of Labor's Consumer Price Index for the previous calendar year. The Secretary announces the amount of the institutional payment in a notice published in the FEDERAL REGISTER.

(b) The institutional allowance paid under paragraph (a) of this section is reduced by the amount the institution charges and collects from a fellowship recipient for tuition and other expenses as part of the recipient's instructional program.

(Authority: 20 U.S.C. 1135d)

[58 FR 65842, Dec. 16, 1993, as amended at 64 FR 13487, Mar. 18, 1999]

Subpart F—What Are the Administrative Responsibilities of the Institution?

§ 648.60 When does an academic department make a commitment to a fellow to provide stipend support?

(a) An academic department makes a commitment to a fellow at any point in his or her graduate study for the length of time necessary for the fellow to complete the course of graduate study, but in no case longer than five years.

(b) An academic department shall not make a commitment under paragraph (a) of this section to provide stipend support unless the academic department has determined that adequate funds are available to fulfill the commitment either from funds received or anticipated under this part or from institutional funds.

(Authority: 20 U.S.C. 1135c)

§ 648.61 How must the academic department supervise the training of fellows?

The institution shall provide to fellows at least one academic year of supervised training in instruction at the graduate or undergraduate level at the schedule of at least one-half-time teaching assistant.

(Authority: 20 U.S.C. 1135b)

§ 648.62 How can the institutional payment be used?

(a) The institutional payment must be first applied against a fellow's tuition and fees.

(b) After payment of a fellow's tuition and fees, the institutional payment may be applied against educational expenses of the fellow that are not covered by tuition and fees and are related to the academic program in which the fellow is enrolled. These expenses include the following:

(1) Costs for rental or purchase of any books, materials, or supplies required

of students in the same course of study.

(2) Costs of computer hardware, project specific software, and other equipment prorated by the length of the student's fellowship over the reasonable life of the equipment.

(3) Membership fees of professional associations.

(4) Travel and per diem to professional association meetings and registration fees.

(5) International travel, per diem, and registration fees to participate in educational activities.

(6) Expenses incurred in research.

(7) Costs of reproducing and binding of educational products.

(c) The institutional payment must supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of the program and, in no case, to supplant institutional funds currently available for fellowships.

(Authority: 20 U.S.C. 1135b, 1135d)

§ 648.63 How can the institutional matching contribution be used?

(a) The institutional matching contribution may be used to—

(1) Provide additional fellowships to graduate students who are not already receiving fellowships under this part and who satisfy the requirements of § 648.40;

(2) Pay for tuition, fees, and the costs listed in § 648.62(b);

(3) Pay for costs of providing a fellow's instruction that are not included in the tuition or fees paid to the institution in which the fellow is enrolled; and

(4) Supplement the stipend received by a fellow under § 648.51 in an amount not to exceed a fellow's financial need.

(b) An institution may not use its institutional matching contribution to fund fellowships that were funded by the institution prior to the award of the grant.

(Authority: 20 U.S.C. 1135, 1135b, 1135c)

§ 648.64 What are unallowable costs?

Neither grant funds nor the institutional matching funds may be used to pay for general operational overhead costs of the academic department.

(Authority: 20 U.S.C. 1135, 1135d)

§ 648.65 How does the institution of higher education disburse and return funds?

(a) An institution that receives a grant shall disburse a stipend to a fellow in accordance with its regular payment schedule, but shall not make less than one payment per academic term.

(b) If a fellow withdraws from an institution before completion of an academic term, the institution may award the fellowship to another individual who satisfies the requirements in § 648.40.

(c) If a fellowship is vacated or discontinued for any period of time, the institution shall return a prorated portion of the institutional payment and unexpended stipend funds to the Secretary, unless the Secretary authorizes the use of those funds for a subsequent project period. The institution shall return the prorated portion of the institutional payment and unexpended stipend funds at a time and in a manner determined by the Secretary.

(d) If a fellow withdraws from an institution before the completion of the academic term for which he or she received a stipend installment, the fellow shall return a prorated portion of the stipend installment to the institution at a time and in a manner determined by the Secretary.

(Authority: 20 U.S.C. 1135c, 1135d)

§ 648.66 What records and reports are required from the institution?

(a) An institution of higher education that receives a grant shall provide to the Secretary, prior to the receipt of grant funds for disbursement to a fellow, a certification that the fellow is enrolled in, is making satisfactory progress in, and is devoting essentially full time to study in the academic field for which the grant was made.

(b) An institution of higher education that receives a grant shall keep records necessary to establish—

(1) That each student receiving a fellowship satisfies the eligibility requirements in § 648.40;

(2) The time and amount of all disbursements and return of stipend payments;

(3) The appropriate use of the institutional payment; and

(4) That assurances, policies, and procedures provided in its application have been satisfied.

(Approved by the Office of Management and Budget under control number 1840–0604)

(Authority: 20 U.S.C. 1135–1135d)

Subpart G—What Conditions Must Be Met by a Fellow After an Award?

§ 648.70 What conditions must be met by a fellow?

To continue to be eligible for a fellowship, a fellow must—

(a) Maintain satisfactory progress in the program for which the fellowship was awarded;

(b) Devote essentially full time to study or research in the academic field in which the fellowship was awarded; and

(c) Not engage in gainful employment, except on a part-time basis in teaching, research, or similar activities determined by the academic department to be in support of the fellow's progress toward a degree.

(Authority: 20 U.S.C. 1135c)

APPENDIX TO PART 648—ACADEMIC AREAS

The Secretary may give an absolute preference to any of the academic areas listed as disciplines or subdisciplines below, or the resulting inter-disciplines. The list was derived from the Classification of Instructional Programs (CIP) developed by the Office of Educational Research and Improvement of the U.S. Department of Education and includes the instructional programs that may constitute courses of studies toward graduate degrees. The code number to the left of each discipline and subdiscipline is the Department's identification code for that particular type of instructional program.

05. Area, Ethnic, and Cultural Studies
- 05.01 Area Studies
- 05.02 Ethnic and Cultural Studies

11. Computer and Information Sciences
- 11.01 Computer and Information Sciences, General
- 11.02 Computer Programming
- 11.04 Information Sciences and Systems
- 11.05 Computer Systems Analysis
- 11.07 Computer Science

13. Education
- 13.01 Education, General
- 13.02 Bilingual/Bicultural Education
- 13.03 Curriculum and Instruction
- 13.04 Education Administration and Supervision
- 13.05 Educational/Instructional Media Design
- 13.06 Educational Evaluation, Research, and Statistics
- 13.07 International and Comparative Education
- 13.08 Educational Psychology
- 13.09 Social and Philosophical Foundations of Education
- 13.10 Special Education
- 13.11 Student Counseling and Personnel Services
- 13.12 General Teacher Education
- 13.13 Teacher Education, Specific Academic, and Vocational Programs
- 13.14 Teaching English as a Second Language/Foreign Language

14. Engineering
- 14.01 Engineering, General
- 14.02 Aerospace, Aeronautical, and Astronautical Engineering
- 14.03 Agricultural Engineering
- 14.04 Architectural Engineering
- 14.05 Bioengineering and Biomedical Engineering
- 14.06 Ceramic Sciences and Engineering
- 14.07 Chemical Engineering
- 14.08 Civil Engineering
- 14.09 Computer Engineering
- 14.10 Electrical, Electronic, and Communications Engineering
- 14.11 Engineering Mechanics
- 14.12 Engineering Physics
- 14.13 Engineering Science
- 14.14 Environmental/Environmental Health Engineering
- 14.15 Geological Engineering
- 14.16 Geophysical Engineering
- 14.17 Industrial/Manufacturing Engineering
- 14.18 Materials Engineering
- 14.19 Mechanical Engineering
- 14.20 Metallurgical Engineering
- 14.21 Mining and Mineral Engineering
- 14.22 Naval Architecture and Marine Engineering
- 14.23 Nuclear Engineering
- 14.24 Ocean Engineering
- 14.25 Petroleum Engineering
- 14.27 Systems Engineering
- 14.28 Textile Sciences and Engineering
- 14.29 Engineering Design
- 14.30 Engineering/Industrial Management
- 14.31 Materials Science
- 14.32 Polymer/Plastics Engineering

16. Foreign Languages
- 16.01 Foreign Languages and Literatures
- 16.03 East and Southeast Asian Languages and Literatures

16.04 East European Languages and Literatures
16.05 Germanic Languages and Literatures
16.06 Greek Languages and Literatures
16.07 South Asian Languages and Literatures
16.09 Romance Languages and Literatures
16.11 Middle Eastern Languages and Literatures
16.12 Classical and Ancient Near Eastern Languages and Literatures
22. Law and Legal Studies
22.01 Law and Legal Studies
25. Library Science
25.01 Library Science/Librarianship
25.03 Library Assistant
26. Biological Sciences/Life Sciences
26.01 Biology, General
26.02 Biochemistry and Biophysics
26.03 Botany
26.04 Cell and Molecular Biology
26.05 Microbiology/Bacteriology
26.06 Miscellaneous Biological Specializations
26.07 Zoology
27. Mathematics
27.01 Mathematics
27.03 Applied Mathematics
27.05 Mathematic Statistics
40. Physical Sciences
40.01 Physical Sciences, General
40.02 Astronomy
40.03 Astrophysics
40.04 Atmospheric Sciences and Meteorology
40.05 Chemistry
40.06 Geological and Related Sciences
40.07 Miscellaneous Physical Sciences
40.08 Physics
42. Psychology
42.01 Psychology
42.02 Clinical Psychology
42.03 Cognitive Psychology and Psycholinguistics
42.04 Community Psychology
42.06 Counseling Psychology
42.07 Developmental and Child Psychology
42.08 Experimental Psychology
42.09 Industrial and Organizational Psychology
42.11 Physiological Psychology/Psychobiology
42.16 Social Psychology
42.17 School Psychology
50. Visual and Performing Arts
50.01 Visual and Performing Arts
50.02 Crafts, Folk Art, and Artisanry
50.03 Dance
50.04 Design and Applied Arts
50.05 Dramatic/Theater Arts and Stagecraft
50.06 Film/Video and Photographic Arts
50.07 Fine Arts and Art Studies
50.09 Music
51. Health Professions and Related Sciences
51.01 Chiropractic (D.C., D.C.M.)
51.02 Communication Disorders Sciences and Services
51.03 Community Health Services
51.04 Dentistry (D.D.S., D.M.D.)
51.05 Dental Clinical Sciences/Graduate Dentistry (M.S., Ph.D.)
51.06 Dental Services
51.07 Health and Medical Administrative Services
51.08 Health and Medical Assistants
51.09 Health and Medical Diagnostic and Treatment Services
51.10 Health and Medical Laboratory Technologies/Technicians
51.11 Health and Medical Preparatory Programs
51.12 Medicine (M.D.)
51.13 Medical Basic Science
51.14 Medical Clinical Services (M.S., Ph.D)
51.15 Mental Health Services
51.16 Nursing
51.17 Optometry (O.D.)
51.18 Ophthalmic/Optometric Services
51.19 Osteopathic Medicine (D.O.)
51.20 Pharmacy
51.21 Podiatry (D.P.M., D.P., Pod.D.)
51.22 Public Health
51.23 Rehabilitation/Therapeutic Services
51.24 Veterinary Medicine (D.V.M.)
51.25 Veterinary Clinical Services
51.27 Miscellaneous Health Professions

PART 650—JACOB K. JAVITS FELLOWSHIP PROGRAM

Subpart A—General

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AUTHORITY: 20 U.S.C. 1134–1134d, unless otherwise noted.

SOURCE: 58 FR 58084, Oct. 28, 1993, unless otherwise noted.

Subpart A—General

§ 650.1 What is the Jacob K. Javits Fellowship Program?

(a) Under the Jacob K. Javits Fellowship Program the Secretary awards fellowships to students of superior ability selected on the basis of demonstrated achievement, financial need, and exceptional promise, for study at the doctoral level in selected fields of the arts, humanities, and social sciences.

(b) Students awarded fellowships under this program are called Jacob K. Javits Fellows.

(Authority: 20 U.S.C. 1134)

[58 FR 58084, Oct. 28, 1993, as amended at 64 FR 3199, Jan. 20, 1999]

§ 650.2 Who is eligible to receive a fellowship?

An individual is eligible to receive a fellowship if the individual—

(a) Is enrolled at an institution of higher education in the program of study leading to a doctoral degree, and is not studying for a religious vocation, in the academic field for which the fellowship is awarded;

(b) Meets the eligibility requirements established by the Fellowship Board;

(c) Is not ineligible to receive assistance under 34 CFR 75.60, as added on July 8, 1992 (57 FR 30328, 30337); and

(d)(1) Is pursuing a doctoral degree that will not lead to an academic career and is—

(i) A citizen or national of the United States;

(ii) A permanent resident of the United States;

(iii) In the United States for other than a temporary purpose and intends to become a permanent resident; or

(iv) A citizen of any one of the Freely Associated States; or

(2) Is pursuing a doctoral degree that will lead to an academic career and is a citizen of the United States.

(Authority: 20 U.S.C. 1134–1134d)

[58 FR 58084, Oct. 28, 1993, as amended at 64 FR 3199, Jan. 20, 1999]

§ 650.3 What regulations apply to the Jacob K. Javits Fellowship Program?

The following regulations apply to this program:

(a) The regulations in this part 650.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) [Reserved]

(2) 34 CFR part 75 (Direct Grant Programs), except for the following:

(i) Subpart C (How to Apply for a Grant);

(ii) Subpart D (How Grants Are Made); and

(iii) Sections 75.580 through 75.592 of subpart E.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations), except for the terms ''grantee'' and ''recipient.''

(4) 34 CFR part 82 (New Restrictions on Lobbying).

(5) [Reserved]

(6) 34 CFR part 86 (Drug-Free Schools and Campuses).

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1134)

[58 FR 58084, Oct. 28, 1993, as amended at 79 FR 76103, Dec. 19, 2014]

§ 650.4 What definitions apply to the Jacob K. Javits Fellowship Program?

The following definitions apply to terms used in this part:

Academic year means the 12-month period beginning with the fall instructional term of the institution of higher education.

Act means the Higher Education Act of 1965, as amended.

Department means any program, unit or any other administrative subdivision of an institution of higher education that—

(1) Directly administers or supervises post-baccalaureate instruction in a specific discipline; and

(2) Has the authority to award academic course credit acceptable to meet degree requirements at an institution of higher education.

Fellow means a recipient of a Jacob K. Javits fellowship under this part.

Fellowship means an award made to a person for graduate study under this part.

Fellowship Board means the Jacob K. Javits Fellowship Program Fellowship Board, composed of individual representatives of both public and private institutions of higher education who are appointed by the Secretary to establish general policies for the program and oversee its operation.

Financial need means the fellow's financial need as determined under part F of title IV of the HEA, for the period of the fellow's enrollment in the approved academic field of study for which the fellowship was awarded.

Grantee means an institution of higher education that administers a fellowship award under this part.

HEA means the Higher Education Act of 1965, as amended.

Institution means an institution of higher education.

Institution of higher education means an institution of higher education as defined in section 1201(a) of the HEA.

Institutional payment means the amount paid by the Secretary to the institution of higher education in which the fellow is enrolled to be applied against the tuition and fees required of the fellow by the institution as part of the fellow's instructional program.

Knows or has reason to know means that a person with respect to a statement—

(1) Has actual knowledge that the statement is false or fictitious;

(2) Acts in deliberate ignorance of the truth or falsity of the statement; or

(3) Acts in reckless disregard of the truth or falsity of the statement.

Recipient means an institution of higher education that administers a fellowship award under this part.

Satisfactory progress means that the fellow meets or exceeds the institution's criteria and standards established for all doctoral students' continued status as applicants for the doctoral degree in the academic field of study for which the fellowship was awarded.

Secretary means Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means the amount paid to an individual awarded a fellowship, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(Authority: 20 U.S.C. 1134–1134d)

[58 FR 58084, Oct. 28, 1993, as amended at 64 FR 3199, Jan. 20, 1999]

§ 650.5 What does a fellowship award include?

The Secretary awards fellowships consisting of the following:

(a) A stipend paid to the fellow, based upon an annual determination of the fellow's financial need, as described in § 650.42.

(b) An annual payment made to the institution in which the fellow is enrolled as described in § 650.41.

(Authority: 20 U.S.C. 1134b)

Subpart B—How Does an Individual Apply for a Fellowship?

§ 650.10 How does an individual apply for a fellowship?

An individual shall apply to the Secretary for a fellowship award in response to an application notice published by the Secretary in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1134)

Subpart C—How Are Fellows Selected?

§ 650.20 What are the selection procedures?

(a) The Fellowship Board establishes criteria for the selection of fellows.

(b) Each year the Fellowship Board selects specific fields of study, and the number of fellows in each field (within the humanities, arts and social sciences), for which fellowships will be awarded.

(c) The Fellowship Board, or in the event the Secretary contracts with a non-governmental entity to administer the program, that non-governmental entity, appoints panels of distinguished individuals in each field to evaluate applications.

(d) The Secretary may make awards of the fellowships each year in two or more stages, taking into account at each stage the amount of funds remaining after the level of funding for awards previously made has been established or adjusted.

(Authority: 20 U.S.C. 1134a)

[58 FR 58084, Oct. 28, 1993, as amended at 64 FR 3199, Jan. 20, 1999]

Subpart D—What Conditions Must be Met By Fellows?

§ 650.30 Where may fellows study?

A fellow may use the fellowship only for enrollment in a doctoral program at an institution of higher education accredited by an accrediting agency or association recognized by the Secretary, which accepts the fellow for graduate study, and which has agreed to comply with the provisions of this part applicable to institutions.

(Authority: 20 U.S.C. 1134–1134d)

[58 FR 58084, Oct. 28, 1993, as amended at 64 FR 3199, Jan. 20, 1999]

§ 650.31 How does an individual accept a fellowship?

(a) An individual notified by the Secretary of selection as a fellow shall inform the Secretary of the individual's acceptance in the manner and time prescribed by the Secretary in the notification.

(b) If an individual fails to comply with the provisions of paragraph (a) of this section, the Secretary treats the individual's failure to comply as a refusal of the fellowship.

(Authority: 20 U.S.C. 1134)

§ 650.32 How does the Secretary withdraw an offer of a fellowship?

(a) The Secretary withdraws an offer of a fellowship to an individual only if the Secretary determines that the individual submitted fraudulent information on the application.

(b) The Secretary considers the application to contain fraudulent information if the application contains a statement that—

(1) The applicant knows or has reason to know—

(i) Asserts a material fact that is false or fictitious; or

(ii) Is false or fictitious because it omits a material fact that the person making the statement has a duty to include in the statement; and

(2) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(Authority: 20 U.S.C. 1134b)

§ 650.33 What is the duration of a fellowship?

(a) An individual may receive a fellowship for a doctoral degree program of study for a total of 48 months or the time required for receiving the doctoral degree, whichever is less.

(b)(1) An individual may receive a fellowship for no more than 24 months for dissertation work, without the prior approval of the Secretary.

(2) A fellow may apply to the Secretary for an additional period of fellowship support for dissertation work. The fellow's application must include—

(i) The specific facts detailing the reasons why the additional period of dissertation work support is necessary;

(ii) A certification by the institution that it is aware of the fellow's application and that the fellow has attained satisfactory progress in the fellow's academic studies; and

(iii) A recommendation from the institution that the additional period of fellowship support for dissertation work is necessary.

(c) A fellow who maintains satisfactory progress in the program of study for which the fellowship was awarded may have the fellowship renewed annually for the total length of time described in paragraph (a) of this section.

(Authority: 20 U.S.C. 1134, 1134c)

§ 650.34 What conditions must be met by fellows?

In order to continue to receive payments under a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the program for which the fellowship was awarded as determined by the institution of higher education;

(b) Devote essentially full time to study or research in the field in which the fellowship was awarded, as determined by the institution of higher education;

(c) Not engage in gainful employment during the period of the fellowship except on a part-time basis, for the institution of higher education at which the fellowship was awarded, in teaching, research, or similar activities approved by the Secretary; and

(d) Begin study under the fellowship in the academic year specified in the fellowship award.

(Authority: 20 U.S.C. 1134–1134d)

§ 650.35 May fellowship tenure be interrupted?

(a) An institution of higher education may allow a fellow to interrupt study for a period not to exceed 12 months, but only if the interruption of study is—

(1) For the purpose of work, travel, or independent study, if the independent study is away from the institution and supportive of the fellow's academic program; and

(2) Approved by the institution of higher education.

(b) A fellow may continue to receive payments during the period of interruption only if the fellow's interruption of study is for the purpose of travel or independent study that is supportive of the fellow's academic program.

(c) A fellow may not receive payments during the period of interruption if the fellow's interruption of study is for the purpose of travel that is not supportive of the fellow's academic program, or work, whether supportive of the fellow's academic program or not.

(d) The Secretary makes a pro rata institutional payment to the institution of higher education in which the fellow is enrolled during the period the fellow receives payments as described in paragraph (b) of this section.

(Authority: 20 U.S.C. 1134)

§ 650.36 May fellows make changes in institution or field of study?

After an award is made, a fellow may not make any change in the field of study or institution attended without the prior approval of the Secretary.

(Authority: 20 U.S.C. 1134c)

§ 650.37 What records and reports are required from fellows?

Each individual who is awarded a fellowship shall keep such records and submit such reports as are required by the Secretary.

(Authority: 20 U.S.C. 1134c)

Subpart E—What Are the Administrative Responsibilities of the Institution?

§ 650.40 What institutional agreements are needed?

Students enrolled in an otherwise eligible institution of higher education may receive fellowships only if the institution enters into an agreement

with the Secretary to comply with the provisions of this part.

(Authority: 20 U.S.C. 1134–1134d)

§ 650.41 How are institutional payments to be administered?

(a) With respect to the awards made for the academic year 1998–1999, the Secretary makes a payment of $10,222 to the institution of higher education for each individual awarded a fellowship for pursuing a course of study at the institution. The Secretary adjusts the amount of the institutional payment annually thereafter in accordance with inflation as determined by the U.S. Department of Labor's Consumer Price Index for the previous calendar year.

(b) If the institution of higher education charges and collects amounts from a fellow for tuition or other expenses required by the institution as part of the fellow's instructional program, the Secretary deducts that amount from the institutional payment.

(c) If the fellow is enrolled for less than a full academic year, the Secretary pays the institution a pro rata share of the allowance.

(Authority: 20 U.S.C. 1134b)

[58 FR 58084, Oct. 28, 1993, as amended at 64 FR 3199, Jan. 20, 1999]

§ 650.42 How are stipends to be administered?

(a) The institution annually shall calculate the amount of a fellow's financial need in the same manner as that in which the institution calculates its students' financial need under part F of title IV of the HEA.

(b) For a fellowship initially awarded for an academic year prior to the academic year 1993–1994, the institution shall pay the fellow a stipend in the amount of the fellow's financial need or $10,000, whichever is less.

(c) For a fellowship initially awarded for the academic year 1993–1994 or any succeeding academic year, the institution shall pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation graduate fellowships, except that the amount must be adjusted as necessary so as not to exceed the fellow's demonstrated level of financial need.

(Authority: 20 U.S.C. 1134b)

§ 650.43 How are disbursement and return of funds made?

(a) An institution shall disburse a stipend to a fellow no less frequently than once per academic term. If the fellowship is vacated or discontinued, the institution shall return any unexpended funds to the Secretary at such time and in such manner as the Secretary may require.

(b) If a fellow withdraws from an institution before completion of an academic term, the institution shall refund to the Secretary a prorated portion of the institutional payment that it received with respect to that fellow. The institution shall return those funds to the Secretary at such time and in such manner as the Secretary may require.

(c) A fellow who withdraws from an institution before completion of an academic term for which the fellow received a stipend installment shall return a prorated portion of the stipend installment to the institution at such time and in such manner as the Secretary may require.

(Authority: 20 U.S.C. 1134b)

§ 650.44 What records and reports are required from institutions?

(a) An institution shall provide to the Secretary, prior to receiving funds for disbursement to a fellow, a certification from an appropriate official at the institution stating whether that fellow is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded.

(b) An institution shall keep such records as are necessary to establish the timing and amount of all disbursements of stipends.

(Approved by the Office of Management and Budget under control number 1840–0562)

(Authority: 20 U.S.C. 1134c)

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Subpart A—General

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654.2 Who is eligible for an award?
654.3 What kind of activity may be assisted?
654.4 What regulations apply?
654.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

654.10 What must a State do to apply for a grant?
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Subpart C—How Does the Secretary Make a Grant to a State?

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654.30 How does a student apply to an SEA for a scholarship?

Subpart E—How Does an SEA Select an Eligible Student To Be Scholar?

654.40 Who is an eligible student?
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Subpart F—How Does a Scholar Receive Scholarship Payments?

654.50 How does an SEA disburse scholarship funds?
654.51 What are the continuing eligibility criteria?
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Subpart G—What Post-Award Conditions Must an SEA Meet?

654.60 What requirements must an SEA meet in the administration of this program?

AUTHORITY: 20 U.S.C. 1070d–31 to 1070d–41, unless otherwise noted.

SOURCE: 58 FR 42669, Aug. 11, 1993, unless otherwise noted.

Subpart A—General

§ 654.1 What is the Robert C. Byrd Honors Scholarship Program?

Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes grants to the States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement.

(Authority: 20 U.S.C. 1070d–31, 1070d–33)

§ 654.2 Who is eligible for an award?

(a) States are eligible for grants under this program.

(b) Students who meet the eligibility criteria in §§ 654.40 and 654.51 are eligible for scholarships under this program.

(Authority: 20 U.S.C. 1070d–33, 1070d–36)

§ 654.3 What kind of activity may be assisted?

A State may use its funds under this program, including funds collected from scholars under § 654.60(a)(3), only to make scholarship payments to scholars.

(Authority: 20 U.S.C. 1070d–35, 1070d–38)

§ 654.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) [Reserved]

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) [Reserved]

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 654.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

[58 FR 42669, Aug. 11, 1993, as amended at 79 FR 76103, Dec. 19, 2014]

§ 654.5 What definitions apply?

(a) *Definitions in EDGAR*. The following terms used in this part are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Private
Public
Secretary
State
State educational agency

(b) *Other definitions*. The following definitions also apply to this part:

Award year means the period of time from July 1 of one year through June 30 of the following year.

Cost of attendance has the meaning given that term in section 472 of the HEA.

Full-time student means a student enrolled at an institution of higher education who is carrying a full-time academic workload, as determined by that institution under standards applicable to all students enrolled in that student's program.

HEA means the Higher Education Act of 1965, as amended.

High school graduate means an individual who has—

(i) A high school diploma;

(ii) A General Education Development (GED) Certificate; or

(iii) Any other evidence recognized by the State as the equivalent of a high school diploma.

Institution of higher education means any public or private nonprofit institution of higher education, proprietary institution of higher education, or postsecondary vocational institution, as defined in section 481 of the HEA.

Participating State means a State that has submitted a participation agreement that has been approved by the Secretary.

Scholar means an individual who is selected as a Byrd Scholar.

Scholarship means an award made to a scholar under this part.

Secondary school year means the period of time during which a secondary school is in session, as determined by State law.

Year of study means the period of time during which a full-time student at an institution of higher education is expected to complete the equivalent of one year of course work, as defined by the institution.

(Authority: 20 U.S.C. 1070d–31 *et seq.*, 20 U.S.C. 1088)

Subpart B—How Does a State Apply for a Grant?

§ 654.10 What must a State do to apply for a grant?

(a) To apply for a grant under this program, a State must submit a participation agreement to the Secretary for review and approval by the deadline announced annually by the Secretary in the FEDERAL REGISTER.

(b) On the Secretary's approval of its initial participation agreement for fiscal year 1993 or thereafter, a State need not submit a new participation agreement to be considered for funding under this program in subsequent years, except that any changes in the State's criteria and procedures must be incorporated in a revised participation agreement which must be submitted to the Secretary for review and approval.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–35)

§ 654.11 What is the content of a participation agreement?

A State's participation agreement must include the following:

(a) A description of the criteria and procedures that the State, through its State educational agency (SEA), plans to use to administer this program in accordance with the requirements of this part, including the criteria and procedures it plans to use to—

(1) Publicize the availability of Byrd scholarships to students in the State,

with particular emphasis on procedures designed to ensure that students from low- and moderate-income families know about their opportunity for participation in the program;

(2) Select eligible students;

(3) Notify scholars of their selections and scholarship awards;

(4) Monitor the continuing eligibility of scholars;

(5) Disburse scholarship funds in accordance with the requirements of § 654.50; and

(6) Collect scholarship funds improperly disbursed.

(b) Assurances that the SEA will—

(1) Comply with the criteria and procedures in its approved participation agreement;

(2) Submit for the prior written approval of the Secretary any changes in the criteria and procedures in the approved participation agreement; and

(3) Expend the payments it receives under this program only as provided in § 654.3.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–35 to 1070d–38)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 654.20 How does the Secretary approve a participation agreement?

The Secretary approves a participation agreement if it contains all of the information and assurances required in § 654.11 and is in compliance with the requirements of this part.

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

§ 654.21 How does the Secretary determine the amount of the grant to each participating State?

(a) From the funds appropriated for this program, the Secretary allots to each participating State a grant equal to $1,500 multiplied by the number of scholarships the Secretary determines to be available to that State on the basis of the formula described in paragraph (b) of this section.

(b) The number of scholarships that the Secretary allots to each participating State for any fiscal year bears the same ratio to the number of scholarships allotted to all participating States as each State's population ages 5 through 17 which is derived from the most recently available data from the U.S. Bureau of the Census bears to the population ages 5 through 17 in all participating States, except that—

(1) Not fewer than 10 scholarships are allotted to any participating State; and

(2) The District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, the Commonwealth of Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands (Palau) each are allotted 10 scholarships.

(Authority: 20 U.S.C. 1070d–34, 1070d–37)

Subpart D—How Does a Student Apply to an SEA for a Scholarship?

§ 654.30 How does a student apply to an SEA for a scholarship?

To apply for a scholarship under this program, a student must follow the application procedures established by the SEA in the student's State of legal residence.

(Authority: 20 U.S.C. 1070d–37)

Subpart E—How Does an SEA Select an Eligible Student To Be a Scholar?

§ 654.40 Who is an eligible student?

A student is eligible to be selected as a scholar if he or she—

(a) Is a legal resident of the State to which he or she is applying for a scholarship;

(b)(1) Is a U.S. citizen or national;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);

(c) Becomes a high school graduate in the same secondary school year in

which he or she submits the scholarship application;

(d) Has applied or been accepted for enrollment as a full-time student at an institution of higher education;

(e) Is not ineligible to receive assistance as a result of default on a Federal student loan or other obligation, as provided under 34 CFR 75.60; and

(f) Files a Statement of Selective Service Registration Status, in accordance with the provisions of 34 CFR 668.33 of the Student Assistance General Provisions regulations, with the institution he or she plans to attend or is attending.

(Authority: 20 U.S.C. 1070d–36, 50 U.S.C. App. 462, 20 U.S.C. 1091)

§ 654.41 What are the selection criteria and procedures?

(a) The SEA shall establish criteria and procedures for the selection of scholars, in accordance with the requirements of this part, after consultation with school administrators, school boards, teachers, counselors, and parents.

(b) The SEA shall establish the selection criteria and procedures to ensure that it selects scholars—

(1) Who are eligible students under the criteria provided in § 654.40;

(2) Who have demonstrated outstanding academic achievement and show promise of continued achievement;

(3) In a manner that ensures an equitable geographic distribution of awards within the State; and

(4) Without regard to—

(i) Whether the secondary school each scholar attends is within or outside the scholar's State of legal residence;

(ii) Whether the institution of higher education each scholar plans to attend is public or private or is within or outside the scholar's State of legal residence;

(iii) Race, color, national origin, sex, religion, disability, or economic background; and

(iv) The scholar's educational expenses or financial need.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–33, 1070d–35 to 1070d–37)

Subpart F—How Does a Scholar Receive Scholarship Payments?

§ 654.50 How does an SEA disburse scholarship funds?

(a) Except as provided in paragraph (b) of this section, the SEA shall disburse $1,500 for each year of study for a maximum of four years of study to each scholar who—

(1) Is selected in accordance with the criteria established under § 654.41; and

(2) Meets the requirements for continuing eligibility under § 654.51.

(b)(1) The SEA shall ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the total cost of attendance.

(2) The SEA shall ensure that loans are reduced prior to reducing a scholarship awarded under this program.

(c) The SEA shall ensure that the selection process is completed, and the awards made, prior to the end of each secondary school academic year.

(Authority: 20 U.S.C. 1070d–38)

§ 654.51 What are the continuing eligibility criteria?

(a) A scholar continues to be eligible for scholarship funds as long as the scholar continues to—

(1) Meet the eligibility requirements in § 654.40(b), (e), and (f);

(2) Be enrolled as a full-time student at an institution of higher education except as provided in paragraph (b) of this section; and

(3) Maintain satisfactory progress as determined by the institution of higher education the scholar is attending, in accordance with the criteria established in 34 CFR 668.14(e) of the Student Assistance General Provisions regulations.

(b) In order to be eligible for scholarship funds, a scholar must be enrolled full time for the first year of study. If after the first year of study, the SEA determines that unusual circumstances

justify waiver of the full-time attendance requirement, the scholar may enroll part time and continue to receive a scholarship payment. The SEA shall prorate the payment according to the scholar's enrollment status for the academic period during which he or she continues to be enrolled on a part-time basis but remains otherwise eligible for the award. For example, if a scholar for whom the full-time enrollment requirement is waived by the SEA is enrolled as a half-time student for one semester, he or she is eligible to receive one-quarter of his or her scholarship during that semester.

(Authority: 20 U.S.C. 1070d–33, 1070d–36)

§ 654.52 What are the consequences of a scholar's failure to meet the eligibility criteria?

(a)(1) An SEA may permit a scholar to postpone or interrupt his or her enrollment at an institution of higher education without forfeiting his or her scholarship for up to 12 months, beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded his or her scholarship or the date the scholar interrupts enrollment.

(2) A scholar who postpones or interrupts his or her enrollment at an institution of higher education in accordance with standards established by the SEA is not eligible to receive scholarship funds during the period of postponement or interruption, but is eligible to receive scholarship payments on enrollment or re-enrollment at an institution of higher education.

(3) A scholar's periods of postponement or interruption, taken in accordance with standards established by the SEA and not in excess of 12 months, are not considered periods of suspension for the purposes of calculating the 12 months provided for suspension prior to termination under paragraph (b)(2) of this section.

(b)(1) Except as provided in paragraph (a) of this section, if an SEA finds that a scholar fails to meet the requirements of § 654.51 within an award year, it shall suspend the scholar's eligibility to receive scholarship funds until the scholar is able to demonstrate to the satisfaction of the SEA that he or she meets these requirements.

(2) Except as provided in paragraph (b)(3) of this section, a scholar's eligibility for a scholarship is terminated when the total of his or her suspension periods exceeds 12 months.

(3) In exceptional circumstances, the SEA may extend the 12-month suspension period without terminating a scholar's eligibility under paragraph (b)(2) of this section, in accordance with standards established by the SEA.

(c) A scholar who receives an award for a period for which the SEA subsequently determines the scholar was ineligible under the requirements in § 654.40 or 654.51 shall repay to the SEA the total amount of the scholarship funds received for the period during which he or she was ineligible.

(Authority: 20 U.S.C. 1070d–35, 1070d–36 to 1070d–38)

Subpart G—What Post-Award Conditions Must an SEA Meet?

§ 654.60 What requirements must an SEA meet in the administration of this program?

(a) To receive and continue to receive payments under this part, an SEA shall—

(1) Comply with the criteria, procedures, and assurances in its approved participation agreement;

(2) Disburse the scholarship funds in accordance with § 654.50 to the scholar, the institution of higher education in which the scholar enrolls, or copayable to the scholar and the institution of higher education in which the scholar enrolls;

(3) Collect any scholarship funds improperly disbursed under § 654.50;

(4) Make reports to the Secretary that the Secretary deems necessary to carry out the Secretary's functions under this part; and

(5) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period specified by the Secretary for those funds.

(b) After awarding all scholarship funds during an award year, as required by paragraph (a)(5) of this section, an SEA may retain any funds that are subsequently returned or collected for

scholarship awards in the following award period.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–33, 1070d–35)

PART 655—INTERNATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

Subpart A—General

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655.1 Which programs do these regulations govern?
655.3 What regulations apply to the International Education Programs?
655.4 What definitions apply to the International Education Programs?

Subpart B—What Kinds of Projects Does the Secretary Assist?

655.10 What kinds of projects does the Secretary assist?

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

655.30 How does the Secretary evaluate an application?
655.31 What general selection criteria does the Secretary use?
655.32 What additional factors does the Secretary consider in making grant awards?

AUTHORITY: 20 U.S.C 1132–1132–7, unless otherwise noted.

SOURCE: 47 FR 14116, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 655.1 Which programs do these regulations govern?

The regulations in this part govern the administration of the following programs in international education:

(a) The National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies (section 602 of the Higher Education Act of 1965, as amended);

(b) The Language Resource Centers Program (section 603);

(c) The Undergraduate International Studies and Foreign Language Program (section 604);

(d) The International Research and Studies Program (section 605); and

(e) The Business and International Education Program (section 613).

(Authority: 20 U.S.C. 1121–1130b)

[47 FR 14116, Apr. 1, 1982, as amended at 58 FR 32575, June 10, 1993; 64 FR 7739, Feb. 16, 1999]

§ 655.3 What regulations apply to the International Education Programs?

The following regulations apply to the International Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) [Reserved]

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities), except that part 79 does not apply to 34 CFR parts 660, 669, and 671.

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6)[Reserved]

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 655; and

(c) As appropriate, the regulations in—

(1) 34 CFR part 656 (National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies);

(2) 34 CFR part 657 (Foreign Language and Area Studies Fellowships Program);

(3) 34 CFR part 658 (Undergraduate International Studies and Foreign Language Program);

(4) 34 CFR part 660 (International Research and Studies Program);

(5) 34 CFR part 661 (Business and International Education Program); and

(6) 34 CFR part 669 (Language Resource Centers Program).

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles,

and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 20 U.S.C. 1121–1127; 1221e–3)

[47 FR 14116, Apr. 1, 1982, as amended at 58 FR 32575, June 10, 1993; 64 FR 7739, Feb. 16, 1999; 79 FR 76104, Dec. 19, 2014]

§ 655.4 What definitions apply to the International Education Programs?

(a) *General definitions.* The following terms used in this part and 34 CFR parts 656, 657, 658, 660, 661, and 669 are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

Acquisition	Grant period
Applicant	Local educational agency
Application	Nonprofit
Award	Project
Budget	Project period
Contract	Private
EDGAR	Public
Equipment	Secretary
Facilities	State educational agency
Fiscal year	Supplies
Grant	
Grantee	

(Authority: 20 U.S.C. 1121–1127)

(b) *Definitions that apply to these programs:* The following definitions apply to International Education Programs:

Consortium of institutions of higher education means a group of institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective, or a public or private nonprofit agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

Critical languages means each of the languages contained in the list of critical languages designated by the Secretary pursuant to section 212(d) of the Education for Economic Security Act, except that, in the implementation of this definition, the Secretary may set priorities according to the purposes of title VI of the Higher Education Act of 1965, as amended.

Institution of higher education means, in addition to an institution that meets the definition of section 101(a) of the Higher Education Act of 1965, as amended, an institution that meets the requirements of section 101(a) except that (1) it is not located in the United States, and (2) it applies for assistance under title VI of the Higher Education Act of 1965, as amended, in consortia with institutions that meet the definitions in section 101(a).

(Authority: 20 U.S.C. 1121–1127, and 1141)

[47 FR 14116, Apr. 1, 1982, as amended at 58 FR 32575, June 10, 1993; 64 FR 7739, Feb. 16, 1999; 74 FR 35072, July 17, 2009; 79 FR 76104, Dec. 19, 2014]

Subpart B—What Kinds of Projects Does the Secretary Assist?

§ 655.10 What kinds of projects does the Secretary assist?

Subpart A of 34 CFR parts 656, 657, and 669 and subpart B of 34 CFR parts 658, 660, 661 describe the kinds of projects that the Secretary assists under the International Education Programs.

(Authority: 20 U.S.C. 1121–1127)

[74 FR 35072, July 17, 2009, as amended at 79 FR 76104, Dec. 19, 2014]

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 655.30 How does the Secretary evaluate an application?

The Secretary evaluates an applications for International Education Programs on the basis of—

(a) The general criteria in § 655.31; and

(b) The specific criteria in, as applicable, subpart D of 34 CFR parts 658, 660, 661, and 669.

(Authority: 20 U.S.C. 1121–1127)

[64 FR 7739, Feb. 16, 1999]

§ 655.31 What general selection criteria does the Secretary use?

(a) *Plan of operation.* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project. In the case of faculty, the qualifications of the faculty and the degree to which that faculty is directly involved in the actual teaching and supervision of students; and

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) Other than library, facilities that the applicant plans to use are adequate (language laboratory, museums, etc.); and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 1121–1127)

§ 655.32 What additional factors does the Secretary consider in making grant awards?

Except for 34 CFR parts 656, 657, and 661, to the extent practicable and consistent with the criterion of excellence, the Secretary seeks to achieve an equitable distribution of funds throughout the Nation.

(Authority: 20 U.S.C. 1126(b)).

[58 FR 32575, June 10, 1993]

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

Subpart A—General

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AUTHORITY: 20 U.S.C. 1122, unless otherwise noted.

SOURCE: 61 FR 50193, Sept. 24, 1996, unless otherwise noted.

Subpart A—General

§ 656.1 What is the National Resource Centers Program?

Under the National Resource Centers Program for Foreign Language and Areas Studies or Foreign Language and International Studies (National Resource Centers Program), the Secretary awards grants to institutions of higher education and consortia of institutions to establish, strengthen, and operate comprehensive and undergraduate Centers that will be national resources for—

(a) Teaching of any modern foreign language;

(b) Instruction in fields needed to provide full understanding of areas, regions, or countries in which the modern foreign language is commonly used;

(c) Research and training in international studies and the international and foreign language aspects of professional and other fields of study; and

(d) Instruction and research on issues in world affairs that concern one or more countries.

(Authority: 20 U.S.C. 1122)

[61 FR 50193, Sept. 24, 1996, as amended at 64 FR 7739, Feb. 16, 1999; 74 FR 35072, July 17, 2009]

§ 656.2 Who is eligible to receive a grant?

An institution of higher education or a consortium of institutions of higher education is eligible to receive a grant under this part.

(Authority: 20 U.S.C. 1122)

[61 FR 50193, Sept. 24, 1996, as amended at 74 FR 35072, July 17, 2009]

§ 656.3 What activities define a comprehensive or undergraduate National Resource Center?

A comprehensive or undergraduate National Resource Center—

(a) Teaches at least one modern foreign language;

(b) Provides—

(1) Instruction in fields necessary to provide a full understanding of the areas, regions, or countries in which the modern foreign language taught is commonly used;

(2) Resources for research and training in international studies, and the international and foreign language aspects of professional and other fields of study; or

(3) Instruction and research on issues in world affairs that concern one or more countries;

(c) Provides outreach and consultative services on a national, regional, and local basis;

(d) Maintains linkages with overseas institutions of higher education and other organizations that may contribute to the teaching and research of the Center;

(e) Maintains important library collections;

(f) Employs faculty engaged in training and research that relates to the subject area of the Center;

(g) Conducts projects in cooperation with other centers addressing themes of world, regional, cross-regional, international, or global importance;

(h) Conducts summer institutes in the United States or abroad designed

to provide language and area training in the Center's field or topic;

(i) Supports instructors of the less commonly taught languages; and

(j) Encourages projects that support students in the science, technology, engineering, and mathematics fields to achieve foreign language proficiency.

(Authority: 20 U.S.C. 1122)

[64 FR 7739, Feb. 16, 1999, as amended at 74 FR 35072, July 17, 2009]

§ 656.4 What types of Centers receive grants?

The Secretary awards grants to Centers that—

(a) Focus on—

(1) A single country or on a world area (such as East Asia, Africa, or the Middle East) and offer instruction in the principal language or languages of that country or area and those disciplinary fields necessary to provide a full understanding of the country or area; or

(2) International studies or the international aspects of contemporary issues or topics (such as international business or energy) while providing instruction in modern foreign languages; and

(b) Provide training at the—

(1) Graduate, professional, and undergraduate levels, as a comprehensive Center; or

(2) Undergraduate level only, as an undergraduate Center.

(Authority: 20 U.S.C. 1122)

§ 656.5 What activities may be carried out?

(a) A Center may carry out any of the activities described in § 656.3 under a grant received under this part.

(b) The Secretary may make an additional grant to a Center for any one or a combination of the following purposes:

(1) Linkage or outreach between foreign language, area studies, and other international fields and professional schools and colleges.

(2) Linkage or outreach with 2- and 4-year colleges and universities.

(3) Linkage or outreach between or among—

(i) Postsecondary programs or departments in foreign language, area studies, or other international fields; and

(ii) State educational agencies or local educational agencies.

(4) Partnerships or programs of linkage and outreach with departments or agencies of Federal and State governments, including Federal or State scholarship programs for students in related areas.

(5) Linkage or outreach with the news media, business, professional, or trade associations.

(6) Summer institutes in area studies, foreign Language, and other international fields designed to carry out the activities in paragraphs (b)(1) through (b)(5) of this section.

(Authority: 20 U.S.C. 1122)

[61 FR 50193, Sept. 24, 1996, as amended at 64 FR 7739, Feb. 16, 1999; 74 FR 35072, July 17, 2009]

§ 656.6 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR part 655.

(b) The regulations in this part 656.

(Authority: 20 U.S.C. 1122)

§ 656.7 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR part 655.

(b) *Area studies* means a program of comprehensive study of the aspects of a world area's society or societies, including study of history, culture, economy, politics, international relations, and languages.

(c) *Center* means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational resources, including language training and various academic disciplines, in the area and subject matters described in § 656.3.

(d) *Comprehensive Center* means a Center that—

(1) Contributes significantly to the national interest in advanced research and scholarship;

(2) Offers intensive language instruction;

(3) Maintains important library collections related to the area of its specialization;

(4) Makes training available to a graduate, professional, and undergraduate clientele; and

(5) Engages in curriculum development and community outreach.

(e) For purposes of this section, *intensive language instruction* means instruction of at least five contact hours per week during the academic year or the equivalent of a full academic year of language instruction during the summer.

(f) *Undergraduate Center* means an administrative unit of an institution of higher education that—

(1) Contributes significantly to the national interest through the education of students who matriculate into advanced language and area studies programs or professional school programs;

(2) Incorporates substantial international and foreign language content into baccalaureate degree program;

(3) Makes training available predominantly to undergraduate students; and

(4) Engages in research, curriculum development, and community outreach.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does One Apply for a Grant?

§ 656.10 What combined application may an institution submit?

An institution that wishes to apply for a grant under this part and for an allocation of fellowships under 34 CFR part 657 may submit one application for both.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Make a Grant?

§ 656.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a comprehensive Center under the criteria contained in § 656.21, and for an undergraduate Center under the criteria contained in § 656.22.

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1122)

[61 FR 50193, Sept. 24, 1996, as amended at 70 FR 13375, Mar. 21, 2005]

§ 656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?

The Secretary evaluates an application for a comprehensive Center on the basis of the criteria in this section.

(a) *Program planning and budget.* The Secretary reviews each application to determine—

(1) The extent to which the activities for which the applicant seeks funding are of high quality and directly related to the purpose of the National Resource Centers Program;

(2) The extent to which the applicant provides a development plan or timeline demonstrating how the proposed activities will contribute to a strengthened program and whether the applicant uses its resources and personnel effectively to achieve the proposed objectives;

(3) The extent to which the costs of the proposed activities are reasonable in relation to the objectives of the program; and

(4) The long-term impact of the proposed activities on the institution's undergraduate, graduate, and professional training programs.

(b) *Quality of staff resources.* The Secretary reviews each application to determine—

(1) The extent to which teaching faculty and other staff are qualified for the current and proposed Center activities and training programs, are provided professional development opportunities (including overseas experience), and participate in teaching, supervising, and advising students;

(2) The adequacy of Center staffing and oversight arrangements, including outreach and administration and the extent to which faculty from a variety of departments, professional schools, and the library are involved; and

(3) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons

who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly.

(c) *Impact and evaluation*. The Secretary reviews each application to determine—

(1) The extent to which the Center's activities and training programs have a significant impact on the university, community, region, and the Nation as shown through indices such as enrollments, graduate placement data, participation rates for events, and usage of Center resources; and the extent to which the applicant supplies a clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly;

(2) The extent to which the applicant provides an evaluation plan that is comprehensive and objective and that will produce quantifiable, outcome-measure-oriented data; and the extent to which recent evaluations have been used to improve the applicant's program;

(3) The degree to which activities of the Center address national needs, and generate information for and disseminate information to the public; and

(4) The applicant's record of placing students into post-graduate employment, education, or training in areas of national need and the applicant's stated efforts to increase the number of such students that go into such placements.

(d) *Commitment to the subject area on which the Center focuses*. The Secretary reviews each application to determine the extent to which the institution provides financial and other support to the operation of the Center, teaching staff for the Center's subject area, library resources, linkages with institutions abroad, outreach activities, and qualified students in fields related to the Center.

(e) *Strength of library*. The Secretary reviews each application to determine—

(1) The strength of the institution's library holdings (both print and nonprint, English and foreign language) in the subject area and at the educational levels (graduate, professional, undergraduate) on which the Center focuses; and the extent to which the institution provides financial support for the acquisition of library materials and for library staff in the subject area of the Center; and

(2) The extent to which research materials at other institutions are available to students through cooperative arrangements with other libraries or on-line databases and the extent to which teachers, students, and faculty from other institutions are able to access the library's holdings.

(f) *Quality of the Center's non-language instructional program*. The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings in a variety of disciplines, including the extent to which courses in the Center's subject matter are available in the institution's professional schools;

(2) The extent to which the Center offers depth of specialized course coverage in one or more disciplines of the Center's subject area;

(3) The extent to which the institution employs a sufficient number of teaching faculty to enable the Center to carry out its purposes and the extent to which instructional assistants are provided with pedagogy training; and

(4) The extent to which interdisciplinary courses are offered for undergraduate and graduate students.

(g) *Quality of the Center's language instructional program*. The Secretary reviews each application to determine—

(1) The extent to which the Center provides instruction in the languages of the Center's subject area and the extent to which students enroll in the study of the languages of the subject area through programs or instruction offered by the Center or other providers;

(2) The extent to which the Center provides three or more levels of language training and the extent to which courses in disciplines other than language, linguistics, and literature are

offered in appropriate foreign languages;

(3) Whether sufficient numbers of language faculty are available to teach the languages and levels of instruction described in the application and the extent to which language teaching staff (including faculty and instructional assistants) have been exposed to current language pedagogy training appropriate for performance-based teaching; and

(4) The quality of the language program as measured by the performance-based instruction being used or developed, the adequacy of resources for language teaching and practice, and language proficiency requirements.

(h) *Quality of curriculum design.* The Secretary reviews each application to determine—

(1) The extent to which the Center's curriculum has incorporated undergraduate instruction in the applicant's area or topic of specialization into baccalaureate degree programs (for example, major, minor, or certificate programs) and the extent to which these programs and their requirements (including language requirements) are appropriate for a Center in this subject area and will result in an undergraduate training program of high quality;

(2) The extent to which the Center's curriculum provides training options for graduate students from a variety of disciplines and professional fields and the extent to which these programs and their requirements (including language requirements) are appropriate for a Center in this subject area and result in graduate training programs of high quality; and

(3) The extent to which the Center provides academic and career advising services for students; the extent to which the Center has established formal arrangements for students to conduct research or study abroad and the extent to which these arrangements are used; and the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs.

(i) *Outreach activities.* The Secretary reviews each application to determine the extent to which the Center demonstrates a significant and measurable regional and national impact of, and faculty and professional school involvement in, domestic outreach activities that involve—

(1) Elementary and secondary schools;

(2) Postsecondary institutions; and

(3) Business, media, and the general public.

(j) *Degree to which priorities are served.* If, under the provisions of § 656.23, the Secretary establishes competitive priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Approved by the Office of Management and Budget under control number 1840–0068)

(Authority: 20 U.S.C. 1122)

[61 FR 50193, Sept. 24, 1996, as amended at 70 FR 13375, Mar. 21, 2005; 74 FR 35073, July 17, 2009]

§ 656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?

The Secretary evaluates an application for an undergraduate Center on the basis of the criteria in this section.

(a) *Program planning and budget.* The Secretary reviews each application to determine—

(1) The extent to which the activities for which the applicant seeks funding are of high quality and directly related to the purpose of the National Resource Centers Program;

(2) The extent to which the applicant provides a development plan or timeline demonstrating how the proposed activities will contribute to a strengthened program and whether the applicant uses its resources and personnel effectively to achieve the proposed objectives;

(3) The extent to which the costs of the proposed activities are reasonable in relation to the objectives of the program; and

(4) The long-term impact of the proposed activities on the institution's undergraduate training program.

(b) *Quality of staff resources.* The Secretary reviews each application to determine—

(1) The extent to which teaching faculty and other staff are qualified for

the current and proposed Center activities and training programs, are provided professional development opportunities (including overseas experience), and participate in teaching, supervising, and advising students;

(2) The adequacy of Center staffing and oversight arrangements, including outreach and administration and the extent to which faculty from a variety of departments, professional schools, and the library are involved; and

(3) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly.

(c) *Impact and evaluation*. The Secretary reviews each application to determine—

(1) The extent to which the Center's activities and training programs have a significant impact on the university, community, region, and the Nation as shown through indices such as enrollments, graduate placement data, participation rates for events, and usage of Center resources; the extent to which students matriculate into advanced language and area or international studies programs or related professional programs; and the extent to which the applicant supplies a clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly;

(2) The extent to which the applicant provides an evaluation plan that is comprehensive and objective and that will produce quantifiable, outcome-measure-oriented data; and the extent to which recent evaluations have been used to improve the applicant's program;

(3) The degree to which activities of the Center address national needs, and generate information for and disseminate information to the public; and

(4) The applicant's record of placing students into post-graduate employment, education, or training in areas of national need and the applicant's stated efforts to increase the number of such students that go into such placements.

(d) *Commitment to the subject area on which the Center focuses*. The Secretary reviews each application to determine the extent to which the institution provides financial and other support to the operation of the Center, teaching staff for the Center's subject area, library resources, linkages with institutions abroad, outreach activities, and qualified students in fields related to the Center.

(e) *Strength of library*. The Secretary reviews each application to determine—

(1) The strength of the institution's library holdings (both print and nonprint, English and foreign language) in the subject area and at the educational levels (graduate, professional, undergraduate) on which the Center focuses; and the extent to which the institution provides financial support for the acquisition of library materials and for library staff in the subject area of the Center; and

(2) The extent to which research materials at other institutions are available to students through cooperative arrangements with other libraries or on-line databases and the extent to which teachers, students, and faculty from other institutions are able to access the library's holdings.

(f) *Quality of the Center's non-language instructional program*. The Secretary reviews each application to determine—

(1) The quality and extent of the Center's course offerings in a variety of disciplines;

(2) The extent to which the Center offers depth of specialized course coverage in one or more disciplines of the Center's subject area;

(3) The extent to which the institution employs a sufficient number of teaching faculty to enable the Center to carry out its purposes and the extent to which instructional assistants are provided with pedagogy training; and

(4) The extent to which interdisciplinary courses are offered for undergraduate students.

(g) *Quality of the Center's language instructional program.* The Secretary reviews each application to determine—

(1) The extent to which the Center provides instruction in the languages of the Center's subject area and the extent to which students enroll in the study of the languages of the subject area through programs offered by the Center or other providers;

(2) The extent to which the Center provides three or more levels of language training and the extent to which courses in disciplines other than language, linguistics, and literature are offered in appropriate foreign languages;

(3) Whether sufficient numbers of language faculty are available to teach the languages and levels of instruction described in the application and the extent to which language teaching staff (including faculty and instructional assistants) have been exposed to current language pedagogy training appropriate for performance-based teaching; and

(4) The quality of the language program as measured by the performance-based instruction being used or developed, the adequacy of resources for language teaching and practice, and language proficiency requirements.

(h) *Quality of curriculum design.* The Secretary reviews each application to determine—

(1) The extent to which the Center's curriculum has incorporated undergraduate instruction in the applicant's area or topic of specialization into baccalaureate degree programs (for example, major, minor, or certificate programs) and the extent to which these programs and their requirements (including language requirements) are appropriate for a Center in this subject area and will result in an undergraduate training program of high quality; and

(2) The extent to which the Center provides academic and career advising services for students; the extent to which the Center has established formal arrangements for students to conduct research or study abroad and the extent to which these arrangements are used; and the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs.

(i) *Outreach activities.* The Secretary reviews each application to determine the extent to which the Center demonstrates a significant and measurable regional and national impact of, and faculty and professional school involvement in, domestic outreach activities that involve—

(1) Elementary and secondary schools;

(2) Postsecondary institutions; and

(3) Business, media and the general public.

(j) *Degree to which priorities are served.* If, under the provisions of § 656.23, the Secretary establishes competitive priorities for Centers, the Secretary considers the degree to which those priorities are being served.

(Approved by the Office of Management and Budget under control number 1840–0068)

(Authority: 20 U.S.C. 1122)

[61 FR 50193, Sept. 24, 1996, as amended at 70 FR 13375, Mar. 21, 2005; 74 FR 35073, July 17, 2009]

§ 656.23 What priorities may the Secretary establish?

(a) The Secretary may select one or more of the following funding priorities:

(1) Specific countries or world areas, such as, for example, East Asia, Africa, or the Middle East.

(2) Specific focus of a Center, such as, for example, a single world area; international studies; a particular issue or topic, e.g., business, development issues, or energy; or any combination.

(3) Level or intensiveness of language instruction, such as intermediate or advanced language instruction, or instruction at an intensity of 10 contact hours or more per week.

(4) Types of activities to be carried out, for example, cooperative summer intensive language programs, course development, or teacher training activities.

(b) The Secretary may select one or more of the activities listed in § 656.5 as a funding priority.

(c) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met By a Grantee?

§ 656.30 What are allowable costs and limitations on allowable costs?

(a) *Allowable costs.* Except as provided under paragraph (b) of this section, a grant awarded under this part may be used to pay all or part of the cost of establishing, strengthening, or operating a comprehensive or undergraduate Center including, but not limited to, the cost of—

(1) Faculty and staff salaries and travel;

(2) Library acquisitions;

(3) Teaching and research materials;

(4) Curriculum planning and development;

(5) Bringing visiting scholars and faculty to the Center to teach, conduct research, or participate in conferences or workshops;

(6) Training and improvement of staff;

(7) Projects conducted in cooperation with other centers addressing themes of world, regional, cross-regional, international, or global importance; and

(8) Summer institutes in the United States or abroad designed to provide language and area training in the Center's field or topic.

(b) *Limitations on allowable costs.* The following are limitations on allowable costs:

(1) Equipment costs exceeding 10 percent of the grant are not allowable.

(2) Funds for undergraduate travel are allowable only in conjunction with a formal program of supervised study in the subject area on which the Center focuses.

(3) Grant funds may not be used to supplant funds normally used by applicants for purposes of this part.

(Authority: 20 U.S.C. 1122)

[61 FR 50193, Sept. 24, 1996, as amended at 64 FR 7739, Feb. 16, 1999]

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

Subpart A—General

Sec.
657.1 What is the Foreign Language and Area Studies Fellowship Program?
657.2 Who is eligible to receive an allocation of fellowships?
657.3 Who is eligible to receive a fellowship?
657.4 What regulations apply?
657.5 What definitions apply?

Subpart B—How Does an Institution or a Student Submit an Application?

657.10 What combined application may an institution submit?
657.11 How does a student apply for a fellowship?

Subpart C—How Does the Secretary Select an Institution for an Allocation of Fellowships?

657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?
657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?
657.22 What priorities may the Secretary establish?

Subpart D—What Conditions Must Be Met By a Grantee and a Fellow?

657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?
657.31 What is the amount of a fellowship?
657.32 What is the payment procedure for fellowships?
657.33 What are the limitations on the use of funds for overseas fellowships?
657.34 Under what circumstances must an institution terminate a fellowship?

AUTHORITY: 20 U.S.C. 1122, unless otherwise noted.

SOURCE: 61 FR 50202, Sept. 24, 1996, unless otherwise noted.

Subpart A—General

§ 657.1 What is the Foreign Language and Area Studies Fellowships Program?

Under the Foreign Language and Area Studies Fellowships Program, the Secretary awards fellowships, through institutions of higher education, to students who are—

(a) Enrolled for undergraduate or graduate training in a Center or program approved by the Secretary under this part; and

(b) Undergoing performance-based modern foreign language training or training in a program for which performance-based modern foreign language instruction is being developed, in combination with area studies, international studies, or the international aspects of professional studies.

(Authority: 20 U.S.C. 1122)

[61 FR 50202, Sept. 24, 1996, as amended at 74 FR 35073, July 17, 2009]

§ 657.2 Who is eligible to receive an allocation of fellowships?

(a) The Secretary awards an allocation of fellowships to an institution of higher education or to a consortium of institutions of higher education that—

(1) Operates a Center or program approved by the Secretary under this part;

(2) Teaches modern foreign languages under a program described in paragraph (b) of this section; and

(3) In combination with the teaching described in paragraph (a)(2) of this section—

(i) Provides instruction in the disciplines needed for a full understanding of the area, regions, or countries in which the foreign languages are commonly used; or

(ii) Conducts training and research in international studies, the international aspects of professional and other fields of study, or issues in world affairs that concern one or more countries.

(b) In teaching those modern foreign languages for which an allocation of fellowships is made available, the institution must be either using a program of performance-based training or developing a performance-based training program.

(c) The Secretary uses the criteria in § 657.21 both to approve Centers and programs for the purpose of receiving an allocation of fellowships and to evaluate applications for an allocation of fellowships.

(d) An institution does not need to receive a grant under the National Resource Center Program (34 CFR part 656) to receive an allocation of fellowships under this part.

(Authority: 20 U.S.C. 1122)

[61 FR 50202, Sept. 24, 1996, as amended at 74 FR 35073, July 17, 2009]

§ 657.3 Who is eligible to receive a fellowship?

A student is eligible to receive a fellowship if the student—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States;

(b) Is accepted for enrollment or is enrolled—

(1) In an institution receiving an allocation of fellowships; and

(2) In a program that combines modern foreign language training with—

(i) Area or international studies; or

(ii) Research and training in the international aspects of professional and other fields of study;

(c) Shows potential for high academic achievement based on such indices as grade point average, class ranking, or similar measures that the institution may determine;

(d) Is enrolled in a program of modern foreign language training in a language for which the institution has developed or is developing performance-based instruction;

(e) In the case of an undergraduate student, is in the intermediate or advanced study of a less commonly taught language; or

(f) In the case of a graduate student, is engaged in—

(1) Predissertation level study;

(2) Preparation for dissertation research;

(3) Dissertation research abroad; or

(4) Dissertation writing.

(Authority: 20 U.S.C. 1122)

[61 FR 50202, Sept. 24, 1996, as amended at 74 FR 35073, July 17, 2009]

§ 657.4 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR part 655.

(b) The regulations in this part 657.

(Authority: 20 U.S.C. 1122)

§ 657.5 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) *Center* means an administrative unit of an institution of higher education that has direct access to highly qualified faculty and library resources, and coordinates a concentrated effort of educational activities, including training in modern foreign languages and various academic disciplines, in its subject area.

(c) *Fellow* means a person who receives a fellowship under this part.

(d) *Fellowship* means the payment a fellow receives under this part.

(e) *Program* means a concentration of educational resources and activities in modern foreign language training and related studies.

(Authority: 20 U.S.C. 1122)

Subpart B—How Does an Institution or a Student Submit an Application?

§ 657.10 What combined application may an institution submit?

An institution that wishes to apply for an allocation of fellowships and for a grant to operate a Center under 34 CFR part 656 may submit a combined application for both grants to the Secretary.

(Authority: 20 U.S.C. 1122)

§ 657.11 How does a student apply for a fellowship?

(a) A student shall apply for a fellowship directly to an institution of higher education that has received an allocation of fellowships.

(b) The applicant shall provide sufficient information to enable the institution to determine whether he or she is eligible to receive a fellowship and whether he or she should be selected to receive a fellowship.

(Authority: 20 U.S.C. 1122)

Subpart C—How Does the Secretary Select an Institution for an Allocation of Fellowships?

§ 657.20 How does the Secretary evaluate an institutional application for an allocation of fellowships?

(a) The Secretary evaluates an institutional application for an allocation of fellowships on the basis of the quality of the applicant's Center or program. The applicant's Center or program is evaluated and approved under the criteria in § 657.21.

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1122)

[61 FR 50202, Sept. 24, 1996, as amended at 70 FR 13375, Mar. 21, 2005]

§ 657.21 What criteria does the Secretary use in selecting institutions for an allocation of fellowships?

The Secretary evaluates an institutional application for an allocation of fellowships on the basis of the criteria in this section.

(a) *Foreign language and area studies fellowships awardee selection procedures.* The Secretary reviews each application to determine whether the selection plan is of high quality, showing how awards will be advertised, how students apply, what selection criteria are used, who selects the fellows, when each step will take place, and how the process will result in awards being made to correspond to any announced priorities.

(b) *Quality of staff resources.* The Secretary reviews each application to determine—

(1) The extent to which teaching faculty and other staff are qualified for the current and proposed activities and training programs, are provided professional development opportunities (including overseas experience), and participate in teaching, supervising, and advising students;

(2) The adequacy of applicant staffing and oversight arrangements and the extent to which faculty from a variety of departments, professional schools, and the library are involved; and

(3) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly.

(c) *Impact and evaluation.* The Secretary reviews each application to determine—

(1) The extent to which the applicant's activities and training programs have contributed to an improved supply of specialists on the program's subject as shown through indices such as undergraduate and graduate enrollments and placement data; and the extent to which the applicant supplies a clear description of how the applicant will provide equal access and treatment of eligible project participants who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, persons with disabilities, and the elderly;

(2) The extent to which the applicant provides an evaluation plan that is comprehensive and objective and that will produce quantifiable, outcome-measure-oriented data; and the extent to which recent evaluations have been used to improve the applicant's program;

(3) The degree to which fellowships awarded by the applicant address national needs; and

(4) The applicant's record of placing students into post-graduate employment, education, or training in areas of national need and the applicant's stated efforts to increase the number of such students that go into such placements.

(d) *Commitment to the subject area on which the applicant or program focuses.* The Secretary reviews each application to determine—

(1) The extent to which the institution provides financial and other support to the operation of the applicant, teaching staff for the applicant's subject area, library resources, and linkages with institutions abroad; and

(2) The extent to which the institution provides financial support to students in fields related to the applicant's teaching program.

(e) *Strength of library.* The Secretary reviews each application to determine—

(1) The strength of the institution's library holdings (both print and nonprint, English and foreign language) for students; and the extent to which the institution provides financial support for the acquisition of library materials and for library staff in the subject area of the applicant; and

(2) The extent to which research materials at other institutions are available to students through cooperative arrangements with other libraries or on-line databases.

(f) *Quality of the applicant's non-language instructional program.* The Secretary reviews each application to determine—

(1) The quality and extent of the applicant's course offerings in a variety of disciplines, including the extent to which courses in the applicant's subject matter are available in the institution's professional schools;

(2) The extent to which the applicant offers depth of specialized course coverage in one or more disciplines on the applicant's subject area;

(3) The extent to which the institution employs a sufficient number of teaching faculty to enable the applicant to carry out its purposes and the extent to which instructional assistants are provided with pedagogy training; and

(4) The extent to which interdisciplinary courses are offered for students.

(g) *Quality of the applicant's language instructional program.* The Secretary reviews each application to determine—

(1) The extent to which the applicant provides instruction in the languages of the applicant's subject area and the extent to which students enroll in the study of the languages of the subject area through programs or instruction offered by the applicant or other providers;

(2) The extent to which the applicant provides three or more levels of language training and the extent to which courses in disciplines other than language, linguistics, and literature are offered in appropriate foreign languages;

(3) Whether sufficient numbers of language faculty are available to teach the languages and levels of instruction described in the application and the extent to which language teaching staff (including faculty and instructional assistants) have been exposed to current language pedagogy training appropriate for performance-based teaching; and

(4) The quality of the language program as measured by the performance-based instruction being used or developed, the adequacy of resources for language teaching and practice, and language proficiency requirements.

(h) *Quality of curriculum design.* The Secretary reviews each application to determine—

(1) The extent to which the applicant's curriculum provides training options for students from a variety of disciplines and professional fields and the extent to which these programs and their requirements (including language requirements) are appropriate for an applicant in this subject area and result in graduate training programs of high quality;

(2) The extent to which the applicant provides academic and career advising services for students; and

(3) The extent to which the applicant has established formal arrangements for students to conduct research or study abroad and the extent to which these arrangements are used; and the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs.

(i) *Priorities.* If one or more competitive priorities have been established under § 657.22, the Secretary reviews each application for information that shows the extent to which the Center or program meets these priorities.

(Approved by the Office of Management and Budget under control number 1840–0068)

(Authority: 20 U.S.C. 1122)

[61 FR 50202, Sept. 24, 1996, as amended at 70 FR 13375, Mar. 21, 2005; 74 FR 35073, July 17, 2009]

§ 657.22 What priorities may the Secretary establish?

(a) The Secretary may establish one or more of the following priorities for the allocation of fellowships:

(1) Specific world areas, or countries, such as East Asia or Mexico.

(2) Languages, such as Chinese.

(3) Levels of language offerings.

(4) Academic disciplines, such as linguistics or sociology.

(5) Professional studies, such as business, law, or education;

(6) Particular subjects, such as population growth and planning, or international trade and business.

(7) A combination of any of these categories.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1122)

Subpart D—What Conditions Must Be Met by a Grantee and a Fellow?

§ 657.30 What is the duration of and what are the limitations on fellowships awarded to individuals by institutions?

(a) *Duration.* An institution may award a fellowship to a student for—

(1) One academic year; or

(2) One summer session if the summer session provides the fellow with the equivalent of one academic year of modern foreign language study.

(b) *Vacancies.* If a fellow vacates a fellowship before the end of an award period, the institution to which the fellowship is allocated may reaward the balance of the fellowship to another student if—

(1) The student meets the eligibility requirements in § 657.3; and

(2) The remaining fellowship period comprises at least one full academic quarter, semester, trimester, or summer session as described in paragraph (a)(2) of this section.

(Authority: 20 U.S.C. 1122)

§ 657.31 What is the amount of a fellowship?

(a)(1) An institution shall award a stipend to fellowship recipients.

(2) Each fellowship includes an institutional payment and a subsistence allowance to be determined by the Secretary.

(3) If the institutional payment determined by the Secretary is greater than the tuition and fees charged by the institution, the institutional payment portion of the fellowship is limited to actual tuition and fees. The difference between actual tuition and fees and the Secretary's institutional payment shall be used to fund additional fellowships to the extent that funds are available for a full subsistence allowance.

(4) If permitted by the Secretary, a stipend awarded to a graduate level recipient may include allowances for dependents and travel for research and study in the United States and abroad.

(5) A stipend awarded to an undergraduate level recipient may include an allowance for educational programs in the United States or educational programs abroad that—

(i) Are closely linked to the overall goals of the recipient's course of study; and

(ii) Have the purpose of promoting foreign language fluency and knowledge of foreign cultures.

(b) The Secretary announces in an application notice published in the FEDERAL REGISTER—

(1) The amounts of the subsistence allowance and the institutional payment for an academic year and the subsistence allowance and the institutional payment for a summer session;

(2) Whether travel and dependents' allowances will be permitted; and

(3) The amount of travel and dependents' allowances.

(Authority: 20 U.S.C. 1122)

[61 FR 50202, Sept. 24, 1996, as amended at 74 FR 35073, July 17, 2009]

§ 657.32 What is the payment procedure for fellowships?

(a) An institution shall pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship.

(b) An institution shall make a payment only to a fellow who is in good standing and is making satisfactory progress.

(c) The institution shall make appropriate adjustments of any overpayment or underpayment to a fellow.

(d) Funds not used by one recipient for reasons of withdrawal are to be used for alternate recipients to the extent that funds are available for a full subsistence allowance.

(Authority: 20 U.S.C. 1122)

§ 657.33 What are the limitations on the use of funds for overseas fellowships?

(a) Before awarding a fellowship for use outside the United States, an institution shall obtain the approval of the Secretary.

(b) The Secretary may approve the use of a fellowship outside the United States if the student is—

(1) Enrolled in an overseas foreign language program approved by the institution at which the student is enrolled in the United States for study at an intermediate or advanced level or at the beginning level if appropriate equivalent instruction is not available in the United States; or

(2) Engaged during the academic year in research that cannot be done effectively in the United States and is affiliated with an institution of higher education or other appropriate organization in the host country.

(Authority: 20 U.S.C. 1122)

§ 657.34 Under what circumstances must an institution terminate a fellowship?

An institution shall terminate a fellowship if—

(a) The fellow is not making satisfactory progress, is no longer enrolled, or is no longer in good standing at the institution; or

(b) The fellow fails to follow the course of study, including modern foreign language study, for which he or she applied, unless a revised course of study is otherwise approvable under this part.

(Authority: 20 U.S.C. 1122)

PART 658—UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAM

Subpart A—General

Sec.
658.1 What is the Undergraduate International Studies and Foreign Language Program?
658.2 Who is eligible to apply for assistance under this program?
658.3 What regulations apply?
658.4 What definitions apply to the Undergraduate International Studies and Foreign Language Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

658.10 For what kinds of projects does the Secretary assist institutions of higher education?
658.11 What projects and activities may a grantee conduct under this program?
658.12 For what kinds of projects does the Secretary assist associations and organizations?

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

658.30 How does the Secretary evaluate an application?
658.31 What selection criteria does the Secretary use?
658.32 What additional criteria does the Secretary apply to institutional applications?
658.33 What additional criterion does the Secretary apply to applications from organizations and associations?
658.34 What additional factors does the Secretary consider in selecting grant recipients?
658.35 What priority does the Secretary give?

Subpart E—What Conditions Must Be Met by a Grantee?

658.40 What are the limitations on allowable costs?
658.41 What are the cost-sharing requirements?

AUTHORITY: 20 U.S.C. 1124, unless otherwise noted.

SOURCE: 47 FR 14122, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 658.1 What is the Undergraduate International Studies and Foreign Language Program?

The Undergraduate International Studies and Foreign Language Program is designed to provide assistance to institutions of higher education, consortia of those institutions, or partnerships between nonprofit educational organizations and institutions of higher education, to assist those institutions, consortia, or partnerships in planning, developing, and carrying out programs to improve undergraduate instruction in international studies and foreign languages.

(Authority: 20 U.S.C. 1124)

[64 FR 7739, Feb. 16, 1999, as amended at 74 FR 35073, July 17, 2009]

§ 658.2 Who is eligible to apply for assistance under this program?

The following are eligible to apply for assistance under this part:

(a) Institutions of higher education.

(b) Consortia of institutions of higher education.

(c) Partnerships between nonprofit educational organizations and institutions of higher education.

(d) Public and private nonprofit agencies and organizations, including professional and scholarly associations.

(Authority: 20 U.S.C. 1124)

[47 FR 14122, Apr. 1, 1982, as amended at 64 FR 7739, Feb. 16, 1999; 74 FR 35073, July 17, 2009]

§ 658.3 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR part 655.

(b) The regulations in this part 658.

(Authority: 20 U.S.C. 1121–1127)

[58 FR 32576, June 10, 1993]

§ 658.4 What definitions apply to the Undergraduate International Studies and Foreign Language Program?

The definitions in 34 CFR 655.4 apply to this program.

(Authority: 20 U.S.C. 1121–1127)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 658.10 For what kinds of projects does the Secretary assist institutions of higher education?

(a) The Secretary may provide assistance to an institution of higher education, a consortium of institutions of higher education, or a partnership between a nonprofit educational organization and an institution of higher education to plan, develop, and carry out a program to improve undergraduate instruction in international studies and foreign languages. Those grants must be awarded to institutions, consortia, or partnerships seeking to create new programs or to strengthen existing programs in foreign languages, area studies, and other international fields.

(b) The Secretary gives consideration to an applicant that proposes a program that—

(1) Initiates new or revised courses in international or area studies;

(2) Makes instruction in foreign languages available to students in the program; and

(3) Takes place primarily in the United States.

(c) The program shall focus on—

(1) International or global studies;

(2) One or more world areas and their languages; or

(3) Issues or topics, such as international environmental studies or international health.

(Authority: 20 U.S.C. 1124(a))

[47 FR 14122, Apr. 1, 1982, as amended at 52 FR 28422, July 29, 1987; 58 FR 32576, June 10, 1993; 64 FR 7740, Feb. 16, 1999; 74 FR 35074, July 17, 2009]

§ 658.11 What projects and activities may a grantee conduct under this program?

The Secretary awards grants under this part to assist in carrying out projects and activities that are an integral part of a program to improve undergraduate instruction in international studies and foreign languages. These include projects such as—

(a) Planning for the development and expansion of undergraduate programs in international studies and foreign languages;

(b) Teaching, research, curriculum development, faculty training in the United States or abroad, and other related activities, including—

(1) Expanding library and teaching resources;

(2) Conducting faculty workshops, conferences, and special lectures;

(3) Developing and testing new curricular materials, including self-instructional materials in foreign languages, or specialized language materials dealing with a particular subject (such as health or the environment);

(4) Initiating new and revised courses in international studies or area studies and foreign languages; and

(5) Conducting pre-service teacher training and in-service teacher professional development;

(c) Expanding the opportunities for learning foreign languages, including less commonly taught languages;

(d) Providing opportunities for which foreign faculty and scholars may visit institutions as visiting faculty;

(e) Placing U.S. faculty members in internships with international associations or with governmental or nongovernmental organizations in the U.S. or abroad to improve their understanding of international affairs;

(f) Developing international education programs designed to develop or enhance linkages between 2-and 4-year institutions of higher education, or baccalaureate and post-baccalaureate programs or institutions;

(g) Developing undergraduate educational programs—

(1) In locations abroad where those opportunities are not otherwise available or that serve students for whom those opportunities are not otherwise available; and

(2) That provide courses that are closely related to on-campus foreign language and international curricula;

(h) Integrating new and continuing education abroad opportunities for undergraduate students into curricula of specific degree programs;

(i) Developing model programs to enrich or enhance the effectiveness of educational programs abroad, including pre-departure and post-return programs, and integrating educational programs abroad into the curriculum of the home institution;

(j) Providing grants for educational programs abroad that—

(1) Are closely linked to the program's overall goals; and

(2) Have the purpose of promoting foreign language fluency and knowledge of world regions;

(k) Developing programs designed to integrate professional and technical education with foreign languages, area studies, and other international fields;

(l) Establishing linkages overseas with institutions of higher education and organizations that contribute to the educational programs assisted under this part;

(m) Developing partnerships between—

(1) Institutions of higher education; and

(2) The private sector, government, or elementary and secondary education institutions in order to enhance international knowledge and skills; and

(n) Using innovative technology to increase access to international education programs.

(Authority: 20 U.S.C. 1124)

[64 FR 7740, Feb. 16, 1999, as amended at 74 FR 35074, July 17, 2009]

§ 658.12 For what kinds of projects does the Secretary assist associations and organizations?

The Secretary may award grants under this part to public and private nonprofit agencies and organizations including scholarly associations, that propose projects that will make an especially significant contribution to strengthening and improving undergraduate instruction in international studies and foreign languages at institutions of higher education.

(Authority: 20 U.S.C. 1124(b))

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 658.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application from an institution of higher education or a consortium of such institutions on the basis of the criteria in §§ 658.31 and 658.32. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(b) The Secretary evaluates an application from an agency or organization or professional or scholarly association on the basis of the criteria in §§ 658.31 and 658.33. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1124)

[70 FR 13375, Mar. 21, 2005, as amended at 74 FR 35074, July 17, 2009]

§ 658.31 What selection criteria does the Secretary use?

The Secretary evaluates an application for a project under this program on the basis of the criteria in this section.

(a) *Plan of operation.* (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (See 34 CFR 655.31(e))

(Authority: 20 U.S.C. 1124)

[47 FR 14122, Apr. 1, 1982, as amended at 70 FR 13375, Mar. 21, 2005]

§ 658.32 What additional criteria does the Secretary apply to institutional applications?

In addition to the criteria referred to in § 658.31, the Secretary evaluates an application submitted by an institution of higher education or a consortium of such institutions on the basis of the criteria in this section.

(a) *Commitment to international studies.* (1) The Secretary reviews each application for information that shows the applicant's commitment to the international studies program.

(2) The Secretary looks for information that shows—

(i) The institution's current strength as measured by the number of international studies courses offered;

(ii) The extent to which planning for the implementation of the proposed

program has involved the applicant's faculty, as well as administrators;

(iii) The institutional commitment to the establishment, operation, and continuation of the program as demonstrated by optimal use of available personnel and other resources; and

(iv) The institutional commitment to the program as demonstrated by the use of institutional funds in support of the program's objectives.

(b) *Elements of the proposed international studies program.* (1) The Secretary reviews each application for information that shows the nature of the applicant's proposed international studies program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities will contribute to the implementation of a program in international studies and foreign languages at the applicant institution;

(ii) The interdisciplinary aspects of the program;

(iii) The number of new and revised courses with an international perspective that will be added to the institution's programs; and

(iv) The applicant's plans to improve or expand language instruction.

(c) *Need for and prospective results of the proposed program.* (1) The Secretary reviews each application for information that shows the need for and the prospective results of the applicant's proposed program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities are needed at the applicant institution;

(ii) The extent to which the proposed use of Federal funds will result in the implementation of a program in international studies and foreign languages at the applicant institution;

(iii) The likelihood that the activities initiated with Federal funds will be continued after Federal assistance is terminated; and

(iv) The adequacy of the provisions for sharing the materials and results of the program with other institutions of higher education.

(Authority: 20 U.S.C. 1124)

[47 FR 14122, Apr. 1, 1982, as amended at 52 FR 28422, July 29, 1987; 70 FR 13375, Mar. 21, 2005; 74 FR 35074, July 17, 2009]

§ 658.33 What additional criterion does the Secretary apply to applications from organizations and associations?

In addition to the criteria referred to in § 658.31, the Secretary evaluates an application submitted by an organization or association on the basis of the criterion in this section.

(a) Need for and potential impact of the proposed project in improving international studies and the study of modern foreign language at the undergraduate level.

(b) The Secretary reviews each application for information that shows the need for and the potential impact of the applicant's proposed projects in improving international studies and the study of modern foreign language at the undergraduate level.

(1) The Secretary looks for information that shows—

(i) The extent to which the applicant's proposed apportionment of Federal funds among the various budget categories for the proposed project will contribute to achieving results;

(ii) The international nature and contemporary relevance of the proposed project;

(iii) The extent to which the proposed project will make an especially significant contribution to the improvement of the teaching of international studies or modern foreign languages at the undergraduate level; and

(iv) The adequacy of the applicant's provisions for sharing the materials and results of the proposed project with the higher education community.

(2) [Reserved]

(Authority: 20 U.S.C. 1124(b))

[47 FR 14122, Apr. 1, 1982, as amended at 70 FR 13375, Mar. 21, 2005]

§ 658.34 What additional factors does the Secretary consider in selecting grant recipients?

In addition to applying the selection criteria in, as appropriate §§ 658.31,

658.32, and 658.33, the Secretary, to the extent practicable and consistent with the criterion of excellence, seeks to encourage diversity by ensuring that a variety of types of projects and institutions receive funding.

(Authority: 20 U.S.C. 1124 and 1126)

[58 FR 32576, June 10, 1993]

§ 658.35 What priority does the Secretary give?

(a) The Secretary gives priority to applications from institutions of higher education or consortia of these institutions that require entering students to have successfully completed at least two years of secondary school foreign language instruction or that require each graduating student to earn two years of postsecondary credit in a foreign language (or have demonstrated equivalent competence in the foreign language) or, in the case of a 2-year degree granting institution, offer two years of postsecondary credit in a foreign language.

(b) The Secretary announces the number of points to be awarded under this priority in the application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1124)

[58 FR 32576, June 10, 1993, as amended at 74 FR 35074, July 17, 2009]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 658.40 What are the limitations on allowable costs?

(a) Equipment costs may not exceed five percent of the grant amount; and

(b) No more than ten percent of the total amount of grant funds awarded to a grantee under this part may be used for the activity described in § 658.11(j).

(Authority: 20 U.S.C. 1124)

[74 FR 35074, July 17, 2009]

§ 658.41 What are the cost-sharing requirements?

(a) The grantee's share may be derived from cash contributions from private sector corporations or foundations in the amount of one-third of the total cost of the project.

(b) The grantee's share may be derived from cash or in-kind contributions from institutional and non-institutional funds, including State and private sector corporation or foundation contributions, equal to one-half of the total cost of the project.

(c) In-kind contributions means property or services that benefit a grant-supported project or program and that are contributed by non-Federal third parties without charge to the grantee.

(d) The Secretary may waive or reduce the required non-Federal share for institutions that—

(1) Are eligible to receive assistance under part A or B of title III or under title V of the Higher Education Act of 1965, as amended; and

(2) Have submitted a grant application under this part that demonstrates a need for a waiver or reduction.

(Authority: 20 U.S.C. 1124 and 3474; OMB Circular A–110)

[58 FR 32577, June 10, 1993, as amended at 64 FR 7740, Feb. 16, 1999; 74 FR 35074, July 17, 2009]

PART 660—THE INTERNATIONAL RESEARCH AND STUDIES PROGRAM

Subpart A—General

Sec.
660.1 What is the International Research and Studies Program?
660.2 Who is eligible to apply for grants under this program?
660.3 What regulations apply?
660.4 What definitions apply to the International Research and Studies Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

660.10 What activities does the Secretary assist?

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

660.30 How does the Secretary evaluate an application?
660.31 What selection criteria does the Secretary use for all applications for a grant?
660.32 What additional selection criteria does the Secretary use for an application for a research project, a survey, or a study?
660.33 What additional selection criteria does the Secretary use for an application

to develop specialized instructional materials?
660.34 What priorities may the Secretary establish?

Subpart E—What Conditions Must Be Met by a Grantee?

660.40 What are the limitations on allowable costs?

AUTHORITY: 20 U.S.C. 1125, unless otherwise noted.

SOURCE: 47 FR 14124, Apr. 1, 1982, unless otherwise noted.

Subpart A—General

§ 660.1 What is the International Research and Studies Program?

The Secretary may, directly or through grants or contracts, conduct research and studies which contribute to the purposes of the International Education Program authorized by part A of title VI of the Higher Education Act of 1965, as amended (HEA). The research and studies may include, but are not limited to—

(a) Studies and surveys to determine needs for increased or improved instruction in modern foreign languages, area studies, or other international fields, including the demand for foreign language, area, and other international specialists in government, education, and the private sector;

(b) Research on more effective methods of providing instruction and achieving competency in foreign languages, area studies, or other international fields;

(c) Research on applying performance tests and standards across all areas of foreign language instruction and classroom use;

(d) Developing and publishing specialized materials for use in foreign language, area studies, and other international fields or for training foreign language, area, and other international specialists;

(e) Studies and surveys to assess the use of graduates of programs supported under title VI of the HEA by governmental, educational, and private-sector organizations and other studies assessing the outcomes and effectiveness of supported programs;

(f) Comparative studies of the effectiveness of strategies to provide international capabilities at institutions of higher education;

(g) Evaluations of the extent to which programs assisted under title VI of the HEA that address national needs would not otherwise be offered;

(h) Studies and surveys of the use of technologies in foreign language, area studies, and international studies programs;

(i) Studies and evaluations of effective practices in the dissemination of international information, materials, research, teaching strategies, and testing techniques throughout the educational community, including elementary and secondary schools;

(j) Evaluations of the extent to which programs assisted under title VI of the HEA reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs, as described in the grantee's application;

(k) Systematic collection, analysis, and dissemination of data that contribute to achieving the purposes of title VI, part A of the HEA; and

(l) Support for programs or activities to make data collected, analyzed, or disseminated under this part publicly available and easy to understand.

(Authority: 20 U.S.C. 1125)

[47 FR 14124, Apr. 1, 1982, as amended at 58 FR 32577, June 10, 1993; 64 FR 7740, Feb. 16, 1999; 74 FR 35074, July 17, 2009]

§ 660.2 Who is eligible to apply for grants under this program?

Public and private agencies, organizations, and institutions, and individuals are eligible to apply for grants under this part.

(Authority: 20 U.S.C. 1125)

§ 660.3 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR part 655.

(b) The regulations in this part 660.

(Authority: 20 U.S.C. 1121–1125)

[58 FR 32577, June 10, 1993]

§ 660.4 What definitions apply to the International Research and Studies Program?

The definitions in 34 CFR 655.4 apply to this program.

(Authority: U.S.C. 1121–1127)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 660.10 What activities does the Secretary assist?

An applicant may apply for funds to carry out any of the following types of activities:

(a) Studies and surveys to determine the need for increased or improved instruction in—

(1) Modern foreign languages; and

(2) Area studies and other international fields needed to provide full understanding of the places in which those languages are commonly used.

(b) Research and studies—

(1) On more effective methods of instruction and achieving competency in modern foreign languages, area studies, or other international fields;

(2) To evaluate competency in those foreign languages, area studies, or other international fields; or

(3) On the application of performance tests and standards across all areas of foreign language instruction and classroom use.

(c) The development and publication of specialized materials—

(1) For use by students and teachers of modern foreign languages, area studies, and other international fields; and

(2) For use in—

(i) Providing such instruction and evaluation; or

(ii) Training individuals to provide such instruction and evaluation.

(d) Research, surveys, studies, or the development of instructional materials that serve to enhance international understanding.

(e) Other research or material development projects that further the purposes of the International Education Program authorized by part A of title VI of the HEA.

(f) Studies and surveys to assess the use of graduates of programs supported under title VI of the HEA by governmental, educational, and private-sector organizations, and other studies assessing the outcomes and effectiveness of supported programs.

(g) Comparative studies of the effectiveness of strategies to provide international capabilities at institutions of higher education.

(h) Evaluations of the extent to which programs assisted under title VI of the HEA that address national needs would not otherwise be offered.

(i) Studies and surveys of the uses of technology in foreign language, area studies, and international studies programs.

(j) Studies and evaluations of effective practices in the dissemination of international information, materials, research, teaching strategies, and testing techniques through the education community, including elementary and secondary schools.

(k) Evaluations of the extent to which programs assisted under title VI of the HEA reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs, as described in the grantee's application.

(l) Systematic collection, analysis, and dissemination of data that contribute to achieving the purposes of title VI, part A of the HEA.

(m) Support for programs or activities to make data collected, analyzed, or disseminated under this part publicly available and easy to understand.

(Authority: 20 U.S.C. 1125)

[47 FR 14124, Apr. 1, 1982, as amended at 52 FR 28424, July 29, 1987; 58 FR 32577, June 10, 1993; 64 FR 7740, Feb. 16, 1999; 74 FR 35074, July 17, 2009]

Subpart C [Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 660.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a research project, a study, or a survey on the basis of the criteria

in §§ 660.31 and 660.32. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(b) The Secretary evaluates an application for the development of specialized instructional materials on the basis of the criteria in §§ 660.31 and 660.33. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1125)

[70 FR 13375, Mar. 21, 2005]

§ 660.31 What selection criteria does the Secretary use for all applications for a grant?

The Secretary evaluates an application for a project under this program on the basis of the criteria in this section. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(a) *Plan of operation.* (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (See 34 CFR 655.31(b))

(c) *Budget and cost effectiveness.* (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (See 34 CFR 655.31(d))

(e) *Adequacy of resources.* (See 34 CFR 655.31(e))

(Authority: 20 U.S.C. 1125)

[47 FR 14124, Apr. 1, 1982, as amended at 58 FR 32577, June 10, 1993; 70 FR 13376, Mar. 21, 2005]

§ 660.32 What additional selection criteria does the Secretary use for an application for a research project, a survey, or a study?

In addition to the criteria referred to in § 660.31, the Secretary evaluates an application for a research project, study, or survey on the basis of the criteria in this section.

(a) *Need for the project.* The Secretary reviews each application for information that shows—

(1) A need for the proposed project in the field of study on which the project focuses; and

(2) That the proposed project will provide information about the present and future needs of the United States for study in foreign language and other international fields.

(b) *Usefulness of expected results.* The Secretary reviews each application for information that shows the extent to which the results of the proposed project are likely to be used by other research projects or programs with similar objectives.

(c) *Development of new knowledge.* The Secretary reviews each application for information that shows that the extent to which the proposed project is likely to develop new knowledge that will contribute to the purposes of the International Education Program authorized by part A of title VI of the HEA.

(d) *Formulation of problems and knowledge of related research.* The Secretary reviews each application for information that shows that problems, questions, or hypotheses to be dealt with by the applicant—

(1) Are well formulated; and

(2) Reflect adequate knowledge of related research.

(e) *Specificity of statement of procedures.* The Secretary reviews each application for the specificity and completeness of the statement of procedures to be followed, including a discussion of such components as sampling techniques, controls, data to be gathered, and statistical and other analyses to be undertaken.

(f) *Adequacy of methodology and scope of project.* The Secretary reviews each application for information that shows—

(1) The adequacy of the proposed teaching, testing, and research methodology; and

(2) The size, scope, and duration of the proposed project.

(Authority: 20 U.S.C. 1125)

[47 FR 14124, Apr. 1, 1982, as amended at 58 FR 32577, June 10, 1993; 70 FR 13376, Mar. 21, 2005]

§ 660.33 What additional selection criteria does the Secretary use for an application to develop specialized instructional materials?

In addition to the criteria referred to in § 660.31, the Secretary evaluates an

application to develop specialized instructional materials on the basis of the criteria in this section.

(a) *Need for the project.* The Secretary reviews each application for information that shows that—

(1) The proposed materials are needed in the educational field of study on which the project focuses; and

(2) The language or languages, the area, region, or country, or the issues or studies for which the materials are to be developed, are of sufficient priority and significance to the national interest to warrant financial support by the Federal Government.

(b) *Potential for the use of materials in other programs.* The Secretary reviews each application for information that shows the extent to which the proposed materials may be used elsewhere in the United States.

(c) *Account of related materials.* The Secretary reviews each application for information that shows that—

(1) All existing related or similar materials have been accounted for and the critical commentary on their adequacy is appropriate and accurate; and

(2) The proposed materials will not duplicate any existing adequate materials.

(d) *Likelihood of achieving results.* The Secretary reviews each application for information that shows that the outlined methods and procedures for preparing the materials are practicable and can be expected to produce the anticipated results.

(e) *Expected contribution to other programs.* The Secretary reviews each application for information that shows the extent to which the proposed work may contribute significantly to strengthening, expanding, or improving programs of foreign language studies, area studies, or international studies in the United States.

(f) *Description of final form of materials.* The Secretary reviews each application for information that shows a high degree of specificity in the description of the contents and final form of the proposed materials.

(g) *Provisions for pretesting and revision.* The Secretary reviews each application for information that shows that adequate provision has been made for—

(1) Pretesting the proposed materials; and

(2) If necessary, revising the proposed materials before publication.

(Authority: 20 U.S.C. 1125)

[47 FR 14124, Apr. 1, 1982, as amended at 58 FR 32577, June 10, 1993; 70 FR 13376, Mar. 21, 2005]

§ 660.34 What priorities may the Secretary establish?

(a) The Secretary may each year select for funding from among the following priorities:

(1) Categories of eligible projects described in § 660.10.

(2) Specific languages or regions for study or materials development; for example, the Near or Middle East, South Asia, Southeast Asia, Eastern Europe, Inner Asia, the Far East, Africa or Latin America, or the languages of those regions.

(3) Topics of research and studies; for example, language acquisition processes, methodology of foreign language instruction, foreign language performance testing, or assessments of resources and needs.

(4) Levels of education; for example, elementary, secondary, postsecondary or university-level education, or teacher education.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1126)

[47 FR 14124, Apr. 1, 1982, as amended at 58 FR 32577, June 10, 1993]

Subpart E—What Conditions Must Be Met by a Grantee?

§ 660.40 What are the limitations on allowable costs?

Funds awarded under this part may not be used for the training of students and teachers.

(Authority: 20 U.S.C. 1125)

PART 661—BUSINESS AND INTERNATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.
661.1 What is the Business and International Education Program?
661.2 Who is eligible to apply for a grant under the Business and International Education Program?
661.3 What regulations apply?
661.4 What definitions apply to the Business and International Education Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under this Program?

661.10 What activities does the Secretary assist under this program?

Subpart C—How Does One Apply for a Grant?

661.20 What must an application include?

Subpart D—How Does the Secretary Make a Grant?

661.30 How does the Secretary evaluate an application?
661.31 What selection criteria does the Secretary use?
661.32 What priorities may the Secretary establish?

Subpart E—What Conditions Must be Met by a Grantee?

661.40 What are the matching requirements?

AUTHORITY: 20 U.S.C. 1130–1130b, unless otherwise noted.

SOURCE: 49 FR 24362, June 12, 1984, unless otherwise noted.

Subpart A—General

§ 661.1 What is the Business and International Education Program?

The Business and International Education Program is designed to promote linkages between institutions of higher education and American businesses engaged in international economic activities. The purpose of each project assisted under this part is both to enhance the international academic programs of institutions of higher education, and to provide appropriate services to the business community that will enable it to expand its capacity to sell its goods and services outside the United States.

(Authority: 20 U.S.C. 1130)

§ 661.2 Who is eligible to apply for a grant under the Business and International Education Program?

Under this program the Secretary considers applications from institutions of higher education that have entered into agreements with business enterprises, trade organizations or associations engaged in international economic activity—or a combination or consortium of these enterprises, organizations or associations—for the purposes of pursuing the activities authorized under this program.

(Authority: 20 U.S.C. 1130a)

§ 661.3 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR part 655.

(b) The regulations in this part 661.

(Authority: 20 U.S.C. 1130–1130b)

[58 FR 32577, June 10, 1993]

§ 661.4 What definitions apply to the Business and International Education Program?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR 77.1:

Applicant	Grant
Application	Grantee
Award	Nonprofit
Budget	Profit
Contract	Private
EDGAR	Public
Equipment	Secretary
Facilities	Supplies
Fiscal Year	

(b) *Definitions in 34 CFR part 655.* The following terms used in this part are defined in 34 CFR part 655.4(b):

Combinations of institutions
Institution of higher education

(Authority: 20 U.S.C. 1130–1130a)

[49 FR 24362, June 12, 1984, as amended at 79 FR 76104, Dec. 19, 2014]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 661.10 What activities does the Secretary assist under this program?

The activities that the Secretary may assist institutions of higher education to conduct under this program, include but are not limited to—

(a) Innovation and improvement of international education curricula to serve the needs of the business community, including the development of new programs for nontraditional, mid-career, or part-time students;

(b) Development of programs to inform the public of increasing international economic interdependence and the role of American business within the international economic system;

(c) Internationalization of curricula at junior and community colleges, and at undergraduate and graduate schools of business;

(d) Development of area studies programs and interdisciplinary international programs;

(e) Establishment of export education programs through cooperative arrangements with regional and world trade centers and councils, and with bilateral and multilateral trade associations;

(f) Research for and development of teaching materials relating to international education, including language materials, and facilities appropriate to business-oriented students;

(g) Establishment of student and faculty fellowships and internships for training and education in international business activities;

(h) Development of opportunities for business and other professional school junior faculty to acquire or strengthen international skills and perspectives;

(i) Development of research programs on issues of common interest to institutions of higher education and private sector organizations and associations engaged in or promoting international economic activity;

(j) The establishment of internships overseas to enable foreign language students to develop their foreign language skills and their knowledge of foreign cultures and societies;

(k) Establishing linkages overseas with institutions of higher education and organizations that contribute to the educational objectives of this program; and

(l) Summer institutes in international business, foreign area, and other international studies designed to carry out the purposes of this program.

(Authority: 20 U.S.C. 1130–1130b)

[49 FR 24362, June 12, 1984, as amended at 52 FR 28426, July 29, 1987; 58 FR 32577, June 10, 1993]

Subpart C—How Does One Apply for a Grant

§ 661.20 What must an application include?

An institution that applies for a grant under this program shall include the following in its application:

(a)(1) A copy of the agreement between the applicant and the other party or parties described in § 661.2 for the purpose of carrying out the activities for which the applicant seeks assistance.

(2) The agreement must be signed by all parties and it must describe the manner in which the business enterprise, trade association, or organization will assist in carrying out the activities proposed in the application.

(b) An assurance that the applicant will use the funds to supplement and not to supplant activities conducted by the applicant.

(c) An assurance that, where applicable, the activities funded by the grant will reflect diverse perspectives and a wide range of views on world regions and international affairs.

(Authority: 20 U.S.C. 1130a)

[49 FR 24362, June 12, 1984, as amended at 74 FR 35074, July 17, 2009]

Subpart D—How Does the Secretary Make a Grant?

§ 661.30 How does the Secretary evaluate an application?

The Secretary evaluates an application for a grant under this program on the basis of the criteria in § 661.31. The Secretary informs applicants of the

maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1130a)

[70 FR 13376, Mar. 21, 2005]

§ 661.31 What selection criteria does the Secretary use?

The Secretary evaluates an application for a grant under this program on the basis of the criteria in this section.

(a) *Plan of operation.* (See 34 CFR 655.31(a).)

(b) *Qualifications of the key personnel.* (See 34 CFR 655.31(b).)

(c) *Budget and cost effectiveness.* (See 34 CFR 655.31(c).)

(d) *Evaluation plan.* (See 34 CFR 655.31(d).)

(e) *Adequacy of resources.* (See 34 CFR 655.31(e).)

(f) *Need for the project.*

The Secretary reviews each application for information that shows the need for the project, and the extent to which the proposed project will promote linkages between institutions of higher education and the business community involved in international economic activities.

(Authority: 20 U.S.C. 1130a)

[49 FR 24362, June 12, 1984, as amended at 70 FR 13376, Mar. 21, 2005]

§ 661.32 What priorities may the Secretary establish?

(a) The Secretary may each year establish priorities for funding from the activities described in § 661.10.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1130a)

Subpart E—What Conditions Must be Met by a Grantee?

§ 661.40 What are the matching requirements?

A grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year.

(Authority: 20 U.S.C. 1130a)

PART 662—FULBRIGHT-HAYS DOCTORAL DISSERTATION RESEARCH ABROAD FELLOWSHIP PROGRAM

Subpart A—General

Sec.
662.1 What is the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program?
662.2 Who is eligible to receive an institutional grant under this program?
662.3 Who is eligible to receive a fellowship under this program?
662.4 What is the amount of a fellowship?
662.5 What is the duration of a fellowship?
662.6 What regulations apply to this program?
662.7 What definitions apply to this program?

Subpart B—Applications

662.10 How does an individual apply for a fellowship?
662.11 What is the role of the institution in the application process?

Subpart C—Selection of Fellows

662.20 How is a Fulbright-Hays Doctoral Dissertation Research Abroad Fellow selected?
662.21 What criteria does the Secretary use to evaluate an application for a fellowship?
662.22 How does the J. William Fulbright Foreign Scholarship Board select fellows?

Subpart D—Post-award Requirements for Institutions

662.30 What are an institution's responsibilities after the award of a grant?

Subpart E—Post-award Requirements for Fellows

662.41 What are a fellow's responsibilities after the award of a fellowship?
662.42 How may a fellowship be revoked?

AUTHORITY: Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

SOURCE: 63 FR 46361, Aug. 31, 1998, unless otherwise noted.

Subpart A—General

§ 662.1 What is the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program?

(a) The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for scholars to conduct research abroad.

(b) Under the program, the Secretary awards fellowships, through institutions of higher education, to doctoral candidates who propose to conduct dissertation research abroad in modern foreign languages and area studies.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.2 Who is eligible to receive an institutional grant under this program?

An institution of higher education is eligible to receive an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.3 Who is eligible to receive a fellowship under this program?

An individual is eligible to receive a fellowship if the individual—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States;

(b)(1) Is a graduate student in good standing at an institution of higher education; and

(2) When the fellowship period begins, is admitted to candidacy in a doctoral degree program in modern foreign languages and area studies at that institution;

(c) Is planning a teaching career in the United States upon completion of his or her doctoral program; and

(d) Possesses sufficient foreign language skills to carry out the dissertation research project.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 662.4 What is the amount of a fellowship?

(a) The Secretary pays—

(1) Travel expenses to and from the residence of the fellow and the country or countries of research;

(2) A maintenance stipend for the fellow and his or her dependents related to cost of living in the host country or countries;

(3) An allowance for research-related expenses overseas, such as books, copying, tuition and affiliation fees, local travel, and other incidental expenses; and

(4) Health and accident insurance premiums.

(b) In addition, the Secretary may pay—

(1) Emergency medical expenses not covered by health and accident insurance; and

(2) The costs of preparing and transporting the remains of a fellow or dependent who dies during the term of the fellowship to his or her former home.

(c) The Secretary announces the amount of benefits expected to be available in an application notice published in the FEDERAL REGISTER.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e) (1) and (2))

§ 662.5 What is the duration of a fellowship?

(a) A fellowship is for a period of not fewer than six nor more than twelve months.

(b) A fellowship may not be renewed.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.6 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this part 662; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 75, 77, 81, 82, and 86).

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles,

and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 22 U.S.C. 2452(b)(6))

[63 FR 46361, Aug. 31, 1998, as amended at 79 FR 76104, Dec. 19, 2014]

§ 662.7 What definitions apply to this program?

(a) Definitions of the following terms as used in this part are contained in 2 CFR part 200, subpart A, or 34 CFR part 77:

Applicant	Fiscal year
Application	Grant
Award	Secretary
EDGAR	

(b) The definition of *institution of higher education* as used in this part is contained in 34 CFR 600.4.

(c) The following definitions of other terms used in this part apply to this program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Dependent means any of the following individuals who accompany the recipient of a fellowship under this program to his or her training site for the entire fellowship period if the individual receives more than 50 percent of his or her support from the recipient during the fellowship period:

(1) The recipient's spouse.

(2) The recipient's or spouse's children who are unmarried and under age 21.

J. William Fulbright Foreign Scholarship Board means the presidentially-appointed board that is responsible for supervision of the program covered by this part.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

[63 FR 46361, Aug. 31, 1998, as amended at 79 FR 76104, Dec. 19, 2014]

Subpart B—Applications

§ 662.10 How does an individual apply for a fellowship?

(a) An individual applies for a fellowship by submitting an application to the Secretary through the institution of higher education in which the individual is enrolled.

(b) The applicant shall provide sufficient information concerning his or her personal and academic background and proposed research project to enable the Secretary to determine whether the applicant—

(1) Is eligible to receive a fellowship under § 662.3; and

(2) Should be selected to receive a fellowship under subparts C and D of this part.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.11 What is the role of the institution in the application process?

An institution of higher education that participates in this program is responsible for—

(a) Making fellowship application materials available to its students;

(b) Accepting and screening applications in accordance with its own technical and academic criteria; and

(c) Forwarding screened applications to the Secretary and requesting an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart C—Selection of Fellows

§ 662.20 How is a Fulbright-Hays Doctoral Dissertation Research Abroad Fellow selected?

(a) The Secretary considers applications for fellowships under this program that have been screened and submitted by eligible institutions. The Secretary evaluates these applications on the basis of the criteria in § 662.21.

(b) The Secretary does not consider applications to carry out research in a country in which the United States has no diplomatic representation.

(c) In evaluating applications, the Secretary obtains the advice of panels of United States academic specialists in modern foreign languages and area studies.

(d) The Secretary gives preference to applicants who have served in the armed services of the United States if their applications are equivalent to those of other applicants on the basis of the criteria in § 662.21.

(e) The Secretary considers information on budget, political sensitivity, and feasibility from binational commissions or United States diplomatic missions, or both, in the proposed country or countries of research.

(f) The Secretary presents recommendations for recipients of fellowships to the J. William Fulbright Foreign Scholarship Board, which reviews the recommendations and approves recipients.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 662.21 What criteria does the Secretary use to evaluate an application for a fellowship?

(a) *General.* The Secretary evaluates an application for a fellowship on the basis of the criteria in this section. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(b) *Quality of proposed project.* The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used;

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's originality and importance in terms of the concerns of the discipline;

(3) The preliminary research already completed in the United States and overseas or plans for such research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries;

(4) The justification for overseas field research and preparations to establish appropriate and sufficient research contacts and affiliations abroad;

(5) The applicant's plans to share the results of the research in progress and a copy of the dissertation with scholars and officials of the host country or countries; and

(6) The guidance and supervision of the dissertation advisor or committee at all stages of the project, including guidance in developing the project, understanding research conditions abroad, and acquainting the applicant with research in the field.

(c) *Qualifications of the applicant.* The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of the applicant's graduate academic record;

(2) The extent to which the applicant's academic record demonstrates strength in area studies relevant to the proposed project;

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language) of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers; and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both.

(d) *Priorities.* (1) The Secretary determines the extent to which the application responds to any priority that the Secretary establishes for the selection of fellows in any fiscal year. The Secretary announces any priorities in an application notice published in the FEDERAL REGISTER.

(2) Priorities may relate to certain world areas, countries, academic disciplines, languages, topics, or combinations of any of these categories. For example, the Secretary may establish a priority for—

(i) A specific geographic area or country, such as the Caribbean or Poland;

(ii) An academic discipline, such as economics or political science;

(iii) A language, such as Tajik or Indonesian; or

(iv) A topic, such as public health issues or the environment.

(Approved by the Office of Management and Budget under control number 1840–0005)

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

[63 FR 46361, Aug. 31, 1998, as amended at 70 FR 13376, Mar. 21, 2005]

§ 662.22 How does the J. William Fulbright Foreign Scholarship Board select fellows?

(a) The J. William Fulbright Foreign Scholarship Board selects fellows on the basis of the Secretary's recommendations and the information described in § 662.20(e) from binational commissions or United States diplomatic missions.

(b) No applicant for a fellowship may be awarded more than one graduate fellowship under the Fulbright-Hays Act from appropriations for a given fiscal year.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(1))

Subpart D—Post-award Requirements for Institutions

§ 662.30 What are an institution's responsibilities after the award of a grant?

(a) An institution to which the Secretary awards a grant under this part is responsible for administering the grant in accordance with the regulations described in § 662.6.

(b) The institution is responsible for processing individual applications for fellowships in accordance with procedures described in § 662.11.

(c) The institution is responsible for disbursing funds in accordance with procedures described in § 662.4.

(d) The Secretary awards the institution an administrative allowance of $100 for each fellowship listed in the grant award document.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart E—Post-award Requirements for Fellows

§ 662.41 What are a fellow's responsibilities after the award of a fellowship?

As a condition of retaining a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the conduct of his or her research;

(b) Devote full time to research on the approved topic;

(c) Not engage in unauthorized income-producing activities during the period of the fellowship; and

(d) Remain a student in good standing with the grantee institution during the period of the fellowship.

(Authority: 22 U.S.C. 2452(b)(6))

§ 662.42 How may a fellowship be revoked?

(a) The fellowship may be revoked only by the J. William Fulbright Foreign Scholarship Board upon the recommendation of the Secretary.

(b) The Secretary may recommend a revocation of a fellowship on the basis of—

(1) The fellow's failure to meet any of the conditions in § 662.41; or

(2) Any violation of the standards of conduct adopted by the J. William Fulbright Foreign Scholarship Board.

(Authority: 22 U.S.C. 2452(b)(6), 2456, and Policy Statements of the J. William Fulbright Foreign Scholarship Board, 1990)

PART 663—FULBRIGHT-HAYS FACULTY RESEARCH ABROAD FELLOWSHIP PROGRAM

Subpart A—General

Sec.
663.1 What is the Fulbright-Hays Faculty Research Abroad Fellowship Program?
663.2 Who is eligible to receive an institutional grant under this program?
663.3 Who is eligible to receive a fellowship under this program?
663.4 What is the amount of a fellowship?
663.5 What is the duration of a fellowship?
663.6 What regulations apply to this program?
663.7 What definitions apply to this program?

Subpart B—Applications

663.10 How does an individual apply for a fellowship?
663.11 What is the role of the institution in the application process?

Subpart C—Selection of Fellows

663.20 How is a Fulbright-Hays Faculty Research Abroad Fellow selected?

663.21 What criteria does the Secretary use to evaluate an application for a fellowship?
663.22 How does the J. William Fulbright Foreign Scholarship Board select fellows?

Subpart D—Post-award Requirements for Institutions

663.30 What are an institution's responsibilities after the award of a grant?

Subpart E—Post-award Requirements for Fellows

663.41 What are a fellow's responsibilities after the award of a fellowship?
663.42 How may a fellowship be revoked?

AUTHORITY: Sec. 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

SOURCE: 63 FR 46363, Aug. 31, 1998, unless otherwise noted.

Subpart A—General

§ 663.1 What is the Fulbright-Hays Faculty Research Abroad Fellowship Program?

(a) The Fulbright-Hays Faculty Research Abroad Program is designed to contribute to the development and improvement of modern foreign language and area studies in the United States by providing opportunities for scholars to conduct research abroad.

(b) Under the program, the Secretary awards fellowships, through institutions of higher education, to faculty members who propose to conduct research abroad in modern foreign languages and area studies to improve their skill in languages and knowledge of the culture of the people of these countries.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.2 Who is eligible to receive an institutional grant under this program?

An institution of higher education is eligible to receive an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 663.3 Who is eligible to receive a fellowship under this program?

An individual is eligible to receive a fellowship if the individual—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States;

(b) Is employed by an institution of higher education;

(c) Has been engaged in teaching relevant to his or her foreign language or area studies specialization for the two years immediately preceding the date of the award;

(d) Proposes research relevant to his or her modern foreign language or area specialization which is not dissertation research for a doctoral degree; and

(e) Possesses sufficient foreign language skills to carry out the research project.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

§ 663.4 What is the amount of a fellowship?

(a) The Secretary pays—

(1) Travel expenses to and from the residence of the fellow and the country or countries of research;

(2) A maintenance stipend for the fellow related to his or her academic year salary; and

(3) An allowance for research-related expenses overseas, such as books, copying, tuition and affiliation fees, local travel, and other incidental expenses.

(b) The Secretary may pay—

(1) Emergency medical expenses not covered by the faculty member's health and accident insurance; and

(2) The costs of preparing and transporting the remains of a fellow or dependent who dies during the term of the fellowship to his or her former home.

(c) The Secretary announces the amount of benefits expected to be available in an application notice published in the FEDERAL REGISTER.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e) (1) and (2))

§ 663.5 What is the duration of a fellowship?

(a) A fellowship is for a period of not fewer than three nor more than twelve months.

(b) A fellowship may not be renewed.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.6 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this part 663; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 75, 77, 81, 82, and 86).

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 22 U.S.C. 2452(b)(6))

[63 FR 46363, Aug. 31, 1998, as amended at 79 FR 76104, Dec. 19, 2014]

§ 663.7 What definitions apply to this program?

(a) Definitions of the following terms as used in this part are contained in 2 CFR part 200, subpart A, or 34 CFR part 77:

Applicant	Fiscal year
Application	Grant
Award	Secretary
EDGAR	

(b) The definition of *institution of higher education* as used in this part is contained in 34 CFR 600.4.

(c) The following definitions of other terms used in this part apply to this program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Dependent means any of the following individuals who accompany the recipient of a fellowship under this program to his or her training site for the entire fellowship period if the individual receives more than 50 percent of his or her support from the recipient during the fellowship period:

(1) The recipient's spouse.

(2) The recipient's or spouse's children who are unmarried and under age 21.

J. William Fulbright Foreign Scholarship Board means the presidentially-appointed board that is responsible for supervision of the program covered by this part.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

[63 FR 46363, Aug. 31, 1998, as amended at 79 FR 76104, Dec. 19, 2014]

Subpart B—Applications

§ 663.10 How does an individual apply for a fellowship?

(a) An individual applies for a fellowship by submitting an application to the Secretary through the institution of higher education at which the individual is employed.

(b) The applicant shall provide sufficient information concerning his or her personal and academic background and proposed research project to enable the Secretary to determine whether the applicant—

(1) Is eligible to receive a fellowship under § 663.3; and

(2) Should be selected to receive a fellowship under subparts C and D of this part.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.11 What is the role of the institution in the application process?

An institution of higher education that participates in this program is responsible for—

(a) Making fellowship application materials available to its faculty;

(b) Accepting and screening applications in accordance with its own technical and academic criteria; and

(c) Forwarding screened applications to the Secretary through a request for an institutional grant.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart C—Selection of Fellows

§ 663.20 How is a Fulbright-Hays Faculty Research Abroad Fellow selected?

(a) The Secretary considers applications for fellowships under this program that have been screened and submitted by eligible institutions. The Secretary evaluates these applications on the basis of the criteria in § 663.21.

(b) The Secretary does not consider applications to carry out research in a country in which the United States has no diplomatic representation.

(c) In evaluating applications, the Secretary obtains the advice of panels of United States academic specialists in modern foreign languages and area studies.

(d) The Secretary gives preference to applicants who have served in the armed services of the United States if their applications are equivalent to those of other applicants on the basis of the criteria in § 663.21.

(e) The Secretary considers information on budget, political sensitivity, and feasibility from binational commissions or United States diplomatic missions, or both, in the proposed country or countries of research.

(f) The Secretary presents recommendations for recipients of fellowships to the J. William Fulbright Foreign Scholarship Board, which reviews the recommendations and approves recipients.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

§ 663.21 What criteria does the Secretary use to evaluate an application for a fellowship?

(a) *General.* The Secretary evaluates an application for a fellowship on the basis of the criteria in this section. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(b) *Quality of proposed project.* The Secretary reviews each application to determine the quality of the research project proposed by the applicant. The Secretary considers—

(1) The statement of the major hypotheses to be tested or questions to be examined, and the description and justification of the research methods to be used;

(2) The relationship of the research to the literature on the topic and to major theoretical issues in the field, and the project's importance in terms of the concerns of the discipline;

(3) The preliminary research already completed or plans for research prior to going overseas, and the kinds, quality and availability of data for the research in the host country or countries;

(4) The justification for overseas field research, and preparations to establish appropriate and sufficient research contacts and affiliations abroad;

(5) The applicant's plans to share the results of the research in progress with scholars and officials of the host country or countries and the American scholarly community; and

(6) The objectives of the project regarding the sponsoring institution's plans for developing or strengthening, or both, curricula in modern foreign languages and area studies.

(c) *Qualifications of the applicant.* The Secretary reviews each application to determine the qualifications of the applicant. The Secretary considers—

(1) The overall strength of applicant's academic record (teaching, research, contributions, professional association activities);

(2) The applicant's excellence as a teacher or researcher, or both, in his or her area or areas of specialization;

(3) The applicant's proficiency in one or more of the languages (other than English and the applicant's native language), of the country or countries of research, and the specific measures to be taken to overcome any anticipated language barriers; and

(4) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both.

(d) *Priorities.* (1) The Secretary determines the extent to which the application responds to any priority that the Secretary establishes for the selection of fellows in any fiscal year. The Secretary announces any priorities in an application notice published in the FEDERAL REGISTER.

(2) Priorities may relate to certain world areas, countries, academic disciplines, languages, topics, or combinations of any of these categories. For example, the Secretary may establish a priority for—

(i) A specific geographic area or country, such as East Asia or Latvia;

(ii) An academic discipline, such as history or political science;

(iii) A language, such as Hausa or Telegu; or

(iv) A topic, such as religious fundamentalism or migration.

(Approved by the Office of Management and Budget under control number 1840–0005)

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

[63 FR 46363, Aug. 31, 1998, as amended at 70 FR 13376, Mar. 21, 2005]

§ 663.22 How does the J. William Fulbright Foreign Scholarship Board select fellows?

The J. William Fulbright Foreign Scholarship Board selects fellows on the basis of the Secretary's recommendations and the information described in § 663.20(e) from binational commissions or United States diplomatic missions.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(1))

Subpart D—Post-award Requirements for Institutions

§ 663.30 What are an institution's responsibilities after the award of a grant?

(a) An institution to which the Secretary awards a grant under this part is responsible for administering the grant in accordance with the regulations described in § 663.6.

(b) The institution is responsible for processing individual applications for fellowships in accordance with procedures described in § 663.11.

(c) The institution is responsible for disbursing funds in accordance with procedures described in § 663.4.

(d) The Secretary awards the institution an administrative allowance of $100 for each fellowship listed in the grant award document.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart E—Post-award Requirements for Fellows

§ 663.41 What are a fellow's responsibilities after the award of a fellowship?

As a condition of retaining a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the conduct of his or her research;

(b) Devote full time to research on the approved topic;

(c) Not engage in unauthorized income-producing activities during the period of the fellowship; and

(d) Remain employed by the grantee institution during the period of the fellowship.

(Authority: 22 U.S.C. 2452(b)(6))

§ 663.42 How may a fellowship be revoked?

(a) The fellowship may be revoked only by the J. William Fulbright Foreign Scholarship Board upon the recommendation of the Secretary.

(b) The Secretary may recommend a revocation of a fellowship on the basis of—

(1) The fellow's failure to meet any of the conditions in § 663.41; or

(2) Any violation of the standards of conduct adopted by the J. William Fulbright Foreign Scholarship Board.

(Authority: 22 U.S.C. 2452(b)(6), 2456, and Policy Statements of the J. William Fulbright Foreign Scholarship Board, 1990)

PART 664—FULBRIGHT-HAYS GROUP PROJECTS ABROAD PROGRAM

Subpart A—General

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664.40 Can participation in a Fulbright-Hays Group Projects Abroad be terminated?

AUTHORITY: 22 U.S.C. 2452(b)(6), unless otherwise noted.

SOURCE: 63 FR 46366, Aug. 31, 1998, unless otherwise noted.

Subpart A—General

§ 664.1 What is the Fulbright-Hays Group Projects Abroad Program?

(a) The Fulbright-Hays Group Projects Abroad Program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States by providing opportunities for teachers, students, and faculty to study in foreign countries.

(b) Under the program, the Secretary awards grants to eligible institutions, departments, and organizations to conduct overseas group projects in research, training, and curriculum development.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.2 Who is eligible to apply for assistance under the Fulbright-Hays Group Projects Abroad Program?

The following are eligible to apply for assistance under this part:

(a) Institutions of higher education;

(b) State departments of education;

(c) Private non-profit educational organizations; and

(d) Consortia of institutions, departments, and organizations described in paragraphs (a), (b), or (c) of this section.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.3 Who is eligible to participate in projects funded under the Fulbright-Hays Group Projects Abroad Program?

An individual is eligible to participate in a Fulbright-Hays Group Projects Abroad, if the individual—

(a)(1) Is a citizen or national of the United States; or

(2) Is a permanent resident of the United States; and

(b)(1) Is a faculty member who teaches modern foreign languages or area studies in an institution of higher education;

(2) Is a teacher in an elementary or secondary school;

(3) Is an experienced education administrator responsible for planning, conducting, or supervising programs in modern foreign languages or area studies at the elementary, secondary, or postsecondary level; or

(4) Is a graduate student, or a junior or senior in an institution of higher education, who plans a teaching career in modern foreign languages or area studies.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.4 What regulations apply to the Fulbright-Hays Group Projects Abroad Program?

The following regulations apply to this program:

(a) The regulations in this part 664; and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 75, 77, 81, 82, and 86).

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles,

and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1), 2456(a)(2))

[63 FR 46366, Aug. 31, 1998, as amended at 79 FR 76104, Dec. 19, 2014]

§ 664.5 What definitions apply to the Fulbright-Hays Group Projects Abroad Program?

(a) *General definitions.* The following terms used in this part are defined in 2 CFR part 200, subpart A, or 34 CFR part 77:

Applicant	Project
Application	Private
Award	Public
EDGAR	Secretary
Equipment	State
Facilities	State educational agency
Grant	Supplies
Grantee	
Nonprofit	

(Authority: 22 U.S.C. 2452(b)(6))

(b) *Definitions that apply to this program:* The following definitions apply to the Fulbright-Hays Group Projects Abroad Program:

Area studies means a program of comprehensive study of the aspects of a society or societies, including the study of their geography, history, culture, economy, politics, international relations, and languages.

Binational commission means an educational and cultural commission established, through an agreement between the United States and either a foreign government or an international organization, to carry out functions in connection with the program covered by this part.

Institution of higher education means an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association.

J. William Fulbright Foreign Scholarship Board means the presidentially appointed board that is responsible for supervision of the program covered by this part.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

[63 FR 46366, Aug. 31, 1998, as amended at 79 FR 76104, Dec. 19, 2014]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 664.10 What kinds of projects does the Secretary assist?

The Secretary assists projects designed to develop or improve programs in modern foreign language or area studies at the elementary, secondary, or postsecondary level by supporting overseas projects in research, training, and curriculum development by groups of individuals engaged in a common endeavor. Projects may include, as described in §§ 664.11 through 664.14, short-term seminars, curriculum development teams, group research or study, and advanced intensive language programs.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.11 What is a short-term seminar project?

A short-term seminar project is—

(a) Designed to help integrate international studies into an institution's or school system's general curriculum; and

(b) Normally four to six weeks in length and focuses on a particular aspect of area study, such as, for example, the culture of the area or a portion of the culture.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.12 What is a curriculum development project?

(a) A curriculum development project—

(1) Is designed to permit faculty and administrators in institutions of higher education and elementary and secondary schools, and administrators in State departments of education the opportunity to spend generally from four to eight weeks in a foreign country acquiring resource materials for curriculum development in modern foreign language and area studies; and

(2) Must provide for the systematic use and dissemination in the United States of the acquired materials.

(b) For the purpose of this section, resource materials include artifacts, books, documents, educational films, museum reproductions, recordings, and other instructional material.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.13 What is a group research or study project?

(a)(1) A group research or study project is designed to permit a group of faculty of an institution of higher education and graduate and undergraduate students to undertake research or study in a foreign country.

(2) The period of research or study in a foreign country is generally from three to twelve months.

(b) As a prerequisite to participating in a research or training project, participants—

(1) Must possess the requisite language proficiency to conduct the research or study, and disciplinary competence in their area of research; and

(2) In a project of a semester or longer, shall have completed, at a minimum, one semester of intensive language training and one course in area studies relevant to the projects.

(Authority: 22 U.S.C. 2452(b)(6))

§ 664.14 What is an advanced overseas intensive language training project?

(a)(1) An advanced overseas intensive language project is designed to take advantage of the opportunities present in the foreign country that are not present in the United States when providing intensive advanced foreign language training.

(2) Project activities may be carried out during a full year, an academic year, a semester, a trimester, a quarter, or a summer.

(3) Generally, language training must be given at the advanced level, i.e., at the level equivalent to that provided to students who have successfully completed two academic years of language training.

(4) The language to be studied must be indigenous to the host country and maximum use must be made of local institutions and personnel.

(b) Generally, participants in projects under this program must have successfully completed at least two academic years of training in the language to be studied.

(Authority: 22 U.S.C. 2452(b)(6))

Subpart C—How Does the Secretary Make a Grant?

§ 664.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a Group Project Abroad on the basis of the criteria in § 664.31. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(b) All selections by the Secretary are subject to review and final approval by the J. William Fulbright Foreign Scholarship Board.

(c) The Secretary does not recommend a project to the J. William Fulbright Foreign Scholarship Board if the applicant proposes to carry it out in a country in which the United States does not have diplomatic representation.

(Authority: 22 U.S.C. 2452(b)(6), 2456)

[63 FR 46366, Aug. 31, 1998, as amended at 70 FR 13376, Mar. 21, 2005]

§ 664.31 What selection criteria does the Secretary use?

The Secretary uses the criteria in this section to evaluate applications for the purpose of recommending to the J. William Fulbright Foreign Scholarship Board Group Projects Abroad for funding under this part.

(a) *Plan of operation.* (1) The Secretary reviews each application for information to determine the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(b) *Quality of key personnel.* (1) The Secretary reviews each application for information to determine the quality of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training in fields related to the objectives of the project as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows that the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows that the facilities, equipment, and supplies that the applicant plans to use are adequate.

(f) *Specific program criteria.* (1) In addition to the general selection criteria contained in this section, the Secretary reviews each application for information that shows that the project meets the specific program criteria.

(2) The Secretary looks for information that shows—

(i) The potential impact of the project on the development of the study of modern foreign languages and area studies in American education.

(ii) The project's relevance to the applicant's educational goals and its relationship to its program development in modern foreign languages and area studies.

(iii) The extent to which direct experience abroad is necessary to achieve the project's objectives and the effectiveness with which relevant host country resources will be utilized.

(g) *Priorities.* The Secretary looks for information that shows the extent to which the project addresses program priorities in the field of modern foreign languages and area studies for that year.

(Approved by the Office of Management and Budget under control number 1840–0068)

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

[63 FR 46366, Aug. 31, 1998, as amended at 70 FR 13376, Mar. 21, 2005]

§ 664.32 What priorities may the Secretary establish?

(a) The Secretary may establish for each funding competition one or more of the following priorities:

(1) Categories of projects described in § 664.10.

(2) Specific languages, topics, countries or geographic regions of the world; for example, Chinese and Arabic, Curriculum Development in Multicultural Education and Transitions from Planned Economies to Market Economies, Brazil and Nigeria, Middle East and South Asia.

(3) Levels of education; for example, elementary and secondary, postsecondary, or postgraduate.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 22 U.S.C. 2452(b)(6), 2456(a)(2))

§ 664.33 What costs does the Secretary pay?

(a) The Secretary pays only part of the cost of a project funded under this part. Other than travel costs, the Secretary does not pay any of the costs for project-related expenses within the United States.

(b) The Secretary pays the cost of the following—

(1) A maintenance stipend related to the cost of living in the host country or countries;

(2) Round-trip international travel;

(3) A local travel allowance for necessary project-related transportation within the country of study, exclusive of the purchase of transportation equipment;

(4) Purchase of project-related artifacts, books, and other teaching materials in the country of study;

(5) Rent for instructional facilities in the country of study;

(6) Clerical and professional services performed by resident instructional personnel in the country of study; and

(7) Other expenses in the country of study, if necessary for the project's success and approved in advance by the Secretary.

(c) The Secretary may pay—

(1) Emergency medical expenses not covered by a participant's health and accident insurance; and

(2) The costs of preparing and transporting the remains of a participant who dies during the term of a project to his or her former home.

(Authority: 22 U.S.C. 2452(b)(6), 2454(e)(1))

Subpart D—What Conditions Must Be Met by a Grantee?

§ 664.40 Can participation in a Fulbright-Hays Group Projects Abroad be terminated?

(a) Participation may be terminated only by the J. William Fulbright Foreign Scholarship Board upon the recommendation of the Secretary.

(b) The Secretary may recommend a termination of participation on the basis of failure by the grantee to ensure that participants adhere to the standards of conduct adopted by the J. William Fulbright Foreign Scholarship Board.

(Authority: 22 U.S.C. 2452(b)(6), 2456, and Policy Statements of the J. William Fulbright Foreign Scholarship Board, 1990)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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AUTHORITY: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, 1221e–3, and 3474; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

Subpart A—General

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program). To the extent that an institution contracts with a third-party servicer to administer any aspect of the institution's participation in any Title IV, HEA program, the applicable rules in

this part also apply to that servicer. An institution's use of a third-party servicer does not alter the institution's responsibility for compliance with the rules in this part.

(b) As used in this part, an ''institution'' includes—

(1) An institution of higher education as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education as defined in 34 CFR 600.5; and

(3) A postsecondary vocational institution as defined in 34 CFR 600.6.

(c) The Title IV, HEA programs include—

(1) The Federal Pell Grant Program (20 U.S.C. 1070a *et seq.;* 34 CFR part 690);

(2) The Academic Competitiveness Grant (ACG) Program (20 U.S.C. 1070a–1; 34 CFR part 691);

(3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (20 U.S.C. 1070b *et seq.;* 34 CFR parts 673 and 676);

(4) The Leveraging Educational Assistance Partnership (LEAP) Program (20 U.S.C. 1070c *et seq.;* 34 CFR part 692);

(5) The Federal Stafford Loan Program (20 U.S.C. 1071 *et seq.;* 34 CFR part 682);

(6) The Federal PLUS Program (20 U.S.C. 1078–2; 34 CFR part 682);

(7) The Federal Consolidation Loan Program (20 U.S.C. 1078–3; 34 CFR part 682);

(8) The Federal Work-Study (FWS) Program (42 U.S.C. 2751 *et seq.;* 34 CFR parts 673 and 675);

(9) The William D. Ford Federal Direct Loan (Direct Loan) Program (20 U.S.C. 1087a *et seq.;* 34 CFR part 685);

(10) The Federal Perkins Loan Program (20 U.S.C. 1087aa *et seq.;* 34 CFR parts 673 and 674);

(11) The National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program (20 U.S.C. 1070a–1; 34 CFR part 691); and

(12) The Teacher Education Assistance for College and Higher Education (TEACH) Grant program.

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

[52 FR 45724, Dec. 1, 1987, as amended at 56 FR 36696, July 31, 1991; 59 FR 22418, Apr. 29, 1994; 61 FR 60396, Nov. 27, 1996; 63 FR 40623, July 29, 1998; 65 FR 38729, June 22, 2000; 71 FR 38002, July 3, 2006; 73 FR 35492, June 23, 2008]

§ 668.2 General definitions.

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Award year
Branch campus
Clock hour
Correspondence course
Credit hour
Educational program
Eligible institution
Federal Family Education Loan (FFEL) programs
Foreign institution
Incarcerated student
Institution of higher education
Legally authorized
Nationally recognized accrediting agency
Nonprofit institution
One-year training program
Postsecondary vocational institution
Preaccredited
Proprietary institution of higher education
Recognized equivalent of a high school diploma
Recognized occupation
Regular student
Secretary
State
Telecommunications course

(b) The following definitions apply to all Title IV, HEA programs:

Academic Competitiveness Grant (ACG) Program: A grant program authorized by Title IV–A–1 of the HEA under which grants are awarded during the first and second academic years of study to eligible financially needy undergraduate students who successfully complete rigorous secondary school programs of study.

(Authority: 20 U.S.C. 1070a–1)

Campus-based programs: (1) The Federal Perkins Loan Program (34 CFR parts 673 and 674);

(2) The Federal Work-Study (FWS) Program (34 CFR parts 673 and 675); and

(3) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program (34 CFR parts 673 and 676).

Defense loan: A loan made before July 1, 1972, under Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

Dependent student: Any student who does not qualify as an independent student (see *Independent student*).

Designated department official: An official of the Department of Education to whom the Secretary has delegated responsibilities indicated in this part.

Direct Loan Program loan: A loan made under the William D. Ford Federal Direct Loan Program.

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

Direct PLUS Loan: A loan made under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1078–2 and 1087a *et seq.*)

Direct Subsidized Loan: A loan made under the Federal Direct Stafford/Ford Loan Program.

(Authority: 20 U.S.C. 1071 and 1087a *et seq.*)

Direct Unsubsidized Loan: A loan made under the Federal Direct Unsubsidized Stafford/Ford Loan Program.

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

Enrolled: The status of a student who—

(1) Has completed the registration requirements (except for the payment of tuition and fees) at the institution that he or she is attending; or

(2) Has been admitted into an educational program offered predominantly by correspondence and has submitted one lesson, completed by him or her after acceptance for enrollment and without the help of a representative of the institution.

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

Expected family contribution (EFC): The amount, as determined under title IV, part F of the HEA, an applicant and his or her spouse and family are expected to contribute toward the applicant's cost of attendance.

Federal Consolidation Loan program: The loan program authorized by Title IV-B, section 428C, of the HEA that encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers, under the Federal Insured Student Loan (FISL) Program as defined in 34 CFR part 682, the Federal Stafford Loan, Federal PLUS (as in effect before October 17, 1986), Federal Consolidation Loan, Federal SLS, ALAS (as in effect before October 17, 1986), Federal Direct Student Loan, and Federal Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of Title VII of the Public Health Service Act, for Federal PLUS borrowers whose loans were made after October 17, 1986, and for Higher Education Assistance Loans (HEAL) authorized by subpart I of part A of Title VII of the Public Health Services Act.

(Authority: 20 U.S.C. 1078–3)

Federal Direct PLUS Program: A loan program authorized by title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct PLUS Program provides loans to parents of dependent students attending schools that participate in the Direct Loan Program. The Federal Direct PLUS Program also provides loans to graduate or professional students attending schools that participate in the Direct Loan Program. The borrower is responsible for the interest that accrues during any period.

(Authority: 20 U.S.C. 10782 and 1087a *et seq.*)

Federal Direct Stafford/Ford Loan Program: A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct Stafford/Ford Loan Program provides loans to undergraduate, graduate, and professional students attending schools that participate in the Direct Loan Program. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

(Authority: 20 U.S.C. 1071 and 1087a *et seq.*)

Federal Direct Unsubsidized Stafford/Ford Loan Program: A loan program authorized by Title IV, Part D of the HEA that is one of the components of the Direct Loan Program. The Federal Direct Unsubsidized Stafford/Ford Loan Program provides loans to undergraduate, graduate, and professional students attending schools that participate in the Direct Loan Program.

The borrower is responsible for the interest that accrues during any period.

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

Federal Pell Grant Program: A grant program authorized by Title IV–A–1 of the HEA under which grants are awarded to help financially needy students meet the cost of their postsecondary education.

(Authority: 20 U.S.C. 1070a)

Federal Perkins loan: A loan made under Title IV-E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV-E of the HEA.

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

Federal Perkins Loan program: The student loan program authorized by Title IV-E of the HEA after October 16, 1986. Unless otherwise noted, as used in this part, the Federal Perkins Loan Program includes the National Direct Student Loan Program and the National Defense Student Loan Program.

(Authority: 20 U.S.C. 1087aa–1087ii)

Federal PLUS loan: A loan made under the Federal PLUS Program.

(Authority: 20 U.S.C. 1078–2)

Federal PLUS program: The loan program authorized by Title IV–B, section 428B, of the HEA, that encourages the making of loans to parents of dependent undergraduate students. Before October 17, 1986, the PLUS Program also provided for making loans to graduate, professional, and independent undergraduate students. Before July 1, 1993, the PLUS Program also provided for making loans to parents of dependent graduate students. Beginning July 1, 2006, the PLUS Program provides for making loans to graduate and professional students.

(Authority: 20 U.S.C. 1078–2)

Federal SLS loan: A loan made under the Federal SLS Program.

(Authority: 20 U.S.C. 1078–1)

Federal Stafford loan: A loan made under the Federal Stafford Loan Program.

(Authority: 20 U.S.C. 1071 *et seq.*)

Federal Stafford Loan program: The loan program authorized by Title IV-B (exclusive of sections 428A, 428B, and 428C) that encourages the making of subsidized Federal Stafford and unsubsidized Federal Stafford loans as defined in 34 CFR part 682 to undergraduate, graduate, and professional students.

(Authority: 20 U.S.C. 1071 *et seq.*)

Federal Supplemental Educational Opportunity Grant (FSEOG) program: The grant program authorized by Title IV-A–2 of the HEA.

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

Federal Supplemental Loans for Students (Federal SLS) Program: The loan program authorized by Title IV-B, section 428A of the HEA, as in effect for periods of enrollment that began before July 1, 1994. The Federal SLS Program encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(Authority: 20 U.S.C. 1078–1)

Federal Work Study (FWS) program: The part-time employment program for students authorized by Title IV-C of the HEA.

(Authority: 42 U.S.C. 2751–2756b)

FFELP loan: A loan made under the FFEL programs.

(Authority: 20 U.S.C. 1071 *et seq.*)

Free application for Federal student aid (FAFSA): The student aid application provided for under section 483 of the HEA, which is used to determine an applicant's eligibility for the title IV, HEA programs.

Full-time student: An enrolled student who is carrying a full-time academic

workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. For a term-based program, the student's workload may include repeating any coursework previously taken in the program but may not include more than one repetition of a previously passed course. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

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

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

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

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

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

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

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

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

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

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

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

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

Graduate or professional student: A student who—

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

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

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

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

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

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

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

Independent student: A student who qualifies as an independent student under section 480(d) of the HEA.

(Authority: 20 U.S.C. 1087vv)

Initiating official: The designated department official authorized to begin an emergency action under 34 CFR 668.83.

Institutional student information record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant's—

(1) FAFSA information; and

(2) EFC.

Leveraging Educational Assistance Partnership (LEAP) Program: The grant program authorized by Title IV-A–4 of the HEA.

National Defense Student Loan program: The student loan program authorized by Title II of the National Defense Education Act of 1958.

(Authority: 20 U.S.C. 421–429)

National Direct Student Loan (NDSL) program: The student loan program authorized by Title IV-E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa–1087ii)

National Early Intervention Scholarship and Partnership (NEISP) program: The scholarship program authorized by Chapter 2 of subpart 1 of Title IV-A of the HEA.

(Authority: 20 U.S.C. 1070a–21 *et seq.*)

National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program: A grant program authorized by Title IV–A–1 of the HEA under which grants are awarded during the third and fourth academic years of study to eligible financially needy undergraduate students pursuing eligible majors in the physical, life, or computer sciences, mathematics, technology, or engineering, or foreign languages determined to be critical to the national security of the United States.

(Authority: 20 U.S.C. 1070a–1)

One-third of an academic year: A period that is at least one-third of an academic year as determined by an institution. At a minimum, one-third of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 10 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 8 semester or trimester hours or 12 quarter hours in an educational program whose length is measured in credit hours or 300 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under § 668.3, one-third of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least one-third of the institution's academic year.

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

Output document: The Student Aid Report (SAR), Electronic Student Aid Report (ESAR), or other document or automated data generated by the Department of Education's central processing system or Multiple Data Entry processing system as the result of the processing of data provided in a Free Application for Federal Student Aid (FAFSA).

Parent: A student's biological or adoptive mother or father or the student's stepparent, if the biological parent or adoptive mother or father has remarried at the time of application.

Participating institution: An eligible institution that meets the standards for participation in Title IV, HEA programs in subpart B and has a current program participation agreement with the Secretary.

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

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

Show-cause official: The designated department official authorized to conduct a show-cause proceeding for an emergency action under 34 CFR 668.83.

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

Student aid report (SAR): A report provided to an applicant by the Secretary showing his or her FAFSA information and the amount of his or her EFC.

Teacher Education Assistance for College and Higher Education (TEACH)

Grant Program: A grant program authorized by title IV of the HEA under which grants are awarded by an institution to students who are completing, or intend to complete, coursework to begin a career in teaching and who agree to serve for not less than four years as a full-time, highly-qualified teacher in a high-need field in a low-income school. If the recipient of a TEACH Grant does not complete four years of qualified teaching service within eight years of completing the course of study for which the TEACH Grant was received or otherwise fails to meet the requirements of 34 CFR 686.12, the amount of the TEACH Grant converts into a Federal Direct Unsubsidized Loan.

(Authority: 20 U.S.C. 1070g)

TEACH Grant: A grant authorized under title IV–A–9 of the HEA and awarded to students in exchange for prospective teaching service.

(Authority: 20 U.S.C. 1070g)

Third-party servicer: (1) An individual or a State, or a private, profit or nonprofit organization that enters into a contract with an eligible institution to administer, through either manual or automated processing, any aspect of the institution's participation in any Title IV, HEA program. The Secretary considers administration of participation in a Title IV, HEA program to—

(i) Include performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA, such as, but not restricted to—

(A) Processing student financial aid applications;

(B) Performing need analysis;

(C) Determining student eligibility and related activities;

(D) Certifying loan applications;

(E) Processing output documents for payment to students;

(F) Receiving, disbursing, or delivering Title IV, HEA program funds, excluding lock-box processing of loan payments and normal bank electronic fund transfers;

(G) Conducting activities required by the provisions governing student consumer information services in subpart D of this part;

(H) Preparing and certifying requests for advance or reimbursement funding;

(I) Loan servicing and collection;

(J) Preparing and submitting notices and applications required under 34 CFR part 600 and subpart B of this part; and

(K) Preparing a Fiscal Operations Report and Application to Participate (FISAP);

(ii) Exclude the following functions—

(A) Publishing ability-to-benefit tests;

(B) Performing functions as a Multiple Data Entry Processor (MDE);

(C) Financial and compliance auditing;

(D) Mailing of documents prepared by the institution;

(E) Warehousing of records; and

(F) Providing computer services or software; and

(iii) Notwithstanding the exclusions referred to in paragraph (1)(ii) of this definition, include any activity comprised of any function described in paragraph (1)(i) of this definition.

(2) For purposes of this definition, an employee of an institution is not a third-party servicer. The Secretary considers an individual to be an employee if the individual—

(i) Works on a full-time, part-time, or temporary basis;

(ii) Performs all duties on site at the institution under the supervision of the institution;

(iii) Is paid directly by the institution;

(iv) Is not employed by or associated with a third-party servicer; and

(v) Is not a third-party servicer for any other institution.

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

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

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

Two-thirds of an academic year: A period that is at least two-thirds of an academic year as determined by an institution. At a minimum, two-thirds of an academic year must be a period that begins on the first day of classes and ends on the last day of classes or examinations and is a minimum of 20 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete at least 16 semester or trimester hours or 24 quarter hours in an educational program whose length is measured in credit hours or 600 clock hours in an educational program whose length is measured in clock hours. For an institution whose academic year has been reduced under § 668.3, two-thirds of an academic year is the pro-rated equivalent, as measured in weeks and credit or clock hours, of at least two-thirds of the institution's academic year.

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

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

(2) In addition to meeting the definition in paragraph (1) of this definition, a student is only considered an undergraduate for purposes of the Federal Supplemental Educational Opportunity Grant (FSEOG) Program, the Federal Pell Grant Program, the Academic Competitiveness Grant (ACG) Program, National Science and Mathematics Access to Retain Talent (SMART) Grant Program, and TEACH Grant program if the student has not yet earned a baccalaureate or professional degree. However, for purposes of 34 CFR 690.6(c)(5) and 686.3(a) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(3) For purposes of dual degree programs that allow individuals to complete a bachelor's degree and either a graduate or professional degree within the same program, a student is considered an undergraduate student for at least the first three years of that program.

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

(Authority: 20 U.S.C. 1070g)

U.S. citizen or national: (1) A citizen of the United States; or

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

(Authority: 8 U.S.C. 1101)

Valid institutional student information record (valid ISIR): An ISIR on which all the information reported on a student's FAFSA is accurate and complete as of the date the application is signed.

Valid student aid report (valid SAR): A student aid report on which all of the information reported on a student's FAFSA is accurate and complete as of the date the application is signed.

(Authority: 20 U.S.C. 1070 *et seq.*, unless otherwise noted)

William D. Ford Federal Direct Loan (Direct Loan) Program: The loan program authorized by Title IV, Part D of the HEA.

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

[59 FR 22418, Apr. 29, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 668.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

EFFECTIVE DATE NOTE: At 81 FR 92262, Dec. 19, 2016, § 668.2 was amended in paragraph (a) by adding to the list of definitions, in alphabetical order, ''Distance education'', effective July 1, 2020.

§ 668.3 Academic year.

(a) *General*. Except as provided in paragraph (c) of this section, an academic year for a program of study must include—

(1)(i) For a program offered in credit hours, a minimum of 30 weeks of instructional time; or

(ii) For a program offered in clock hours, a minimum of 26 weeks of instructional time; and

(2) For an undergraduate educational program, an amount of instructional time whereby a full-time student is expected to complete at least—

(i) Twenty-four semester or trimester credit hours or 36 quarter credit hours for a program measured in credit hours; or

(ii) 900 clock hours for a program measured in clock hours.

(b) *Definitions*. For purposes of paragraph (a) of this section—

(1) A week is a consecutive seven-day period;

(2) A week of instructional time is any week in which at least one day of regularly scheduled instruction or examinations occurs or, after the last scheduled day of classes for a term or payment period, at least one day of study for final examinations occurs; and

(3) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

(c) *Reduction in the length of an academic year*. (1) Upon the written request of an institution, the Secretary may approve, for good cause, an academic year of 26 through 29 weeks of instructional time for educational programs offered by the institution if the institution offers a two-year program leading to an associate degree or a four-year program leading to a baccalaureate degree.

(2) An institution's written request must—

(i) Identify each educational program for which the institution requests a reduction, and the requested number of weeks of instructional time for that program;

(ii) Demonstrate good cause for the requested reductions; and

(iii) Include any other information that the Secretary may require to determine whether to grant the request.

(3)(i) The Secretary approves the request of an eligible institution for a reduction in the length of its academic year if the institution has demonstrated good cause for granting the request and the institution's accrediting agency and State licensing agency have approved the request.

(ii) If the Secretary approves the request, the approval terminates when the institution's program participation agreement expires. The institution may request an extension of that approval as part of the recertification process.

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

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

[67 FR 67071, Nov. 1, 2002, as amended at 71 FR 45693, Aug. 9, 2006]

§ 668.4 Payment period.

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

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

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

(2) For FFEL and Direct Loan program funds—

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

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

half of the number of weeks of instructional time in the program; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Application of the cohort default rate exemption.* Notwithstanding paragraphs (a), (b), and (c) of this section, if

34 CFR 682.604(c)(10) or 34 CFR 685.301(b)(8) applies to an eligible program that measures progress in credit hours and uses nonstandard terms, an eligible program that measures progress in credit hours and does not have academic terms, or an eligible program that measures progress in clock hours, the payment period for purposes of FFEL and Direct Loan funds is the loan period for those portions of the program to which 34 CFR 682.604(c)(10) or 34 CFR 685.301(b)(8) applies.

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

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

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

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

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

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

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

(g) *Re-entry after 180 days or transfer.* (1) Except as provided in paragraph (g)(3) of this section, and subject to the conditions of paragraph (g)(2) of this section, an institution calculates new payment periods for the remainder of a student's program based on paragraph (c) of this section, for a student who withdraws from a program described in paragraph (c) of this section, and—

(i) Reenters that program after 180 days;

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

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

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

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

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

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

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

(ii) The coursework in the payment period the student is transferring out of is substantially similar to the coursework the student will be taking when he or she first transfers into the new program;

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

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

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

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

(1) Terms are *substantially equal in length* if no term in the program is more than two weeks of instructional

time longer than any other term in that program; and

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

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

[72 FR 62025, Nov. 1, 2007, as amended at 73 FR 35492, June 23, 2008]

§ 668.5 Written arrangements to provide educational programs.

(a) *Written arrangements between eligible institutions.* (1) Except as provided in paragraph (a)(2) of this section, if an eligible institution enters into a written arrangement with another eligible institution, or with a consortium of eligible institutions, under which the other eligible institution or consortium provides part of the educational program to students enrolled in the first institution, the Secretary considers that educational program to be an eligible program if the educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of § 668.8.

(2) If the written arrangement is between two or more eligible institutions that are owned or controlled by the same individual, partnership, or corporation, the Secretary considers the educational program to be an eligible program if—

(i) The educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of § 668.8; and

(ii) The institution that grants the degree or certificate provides more than 50 percent of the educational program.

(b) *Written arrangements for study-abroad.* Under a study abroad program, if an eligible institution enters into a written arrangement under which an institution in another country, or an organization acting on behalf of an institution in another country, provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of paragraphs (c)(1) through (c)(3) of this section.

(c) *Written arrangements between an eligible institution and an ineligible institution or organization.* If an eligible institution enters into a written arrangement with an institution or organization that is not an eligible institution under which the ineligible institution or organization provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if—

(1) The ineligible institution or organization has not—

(i) Had its eligibility to participate in the title IV, HEA programs terminated by the Secretary;

(ii) Voluntarily withdrawn from participation in the title IV, HEA programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or by the Secretary;

(iii) Had its certification to participate in the title IV, HEA programs revoked by the Secretary;

(iv) Had its application for re-certification to participate in the title IV, HEA programs denied by the Secretary; or

(v) Had its application for certification to participate in the title IV, HEA programs denied by the Secretary;

(2) The educational program offered by the institution that grants the degree or certificate otherwise satisfies the requirements of § 668.8; and

(3)(i) The ineligible institution or organization provides 25 percent or less of the educational program; or

(ii)(A) The ineligible institution or organization provides more than 25 percent but less than 50 percent of the educational program;

(B) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and

(C) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the FEDERAL REGISTER in accordance with 34 CFR part 603, has specifically determined that the institution's arrangement meets the agency's

standards for the contracting out of educational services.

(d) *Administration of title IV, HEA programs.* (1) If an institution enters into a written arrangement as described in paragraph (a), (b), or (c) of this section, except as provided in paragraph (d)(2) of this section, the institution at which the student is enrolled as a regular student must determine the student's eligibility for title IV, HEA program funds, and must calculate and disburse those funds to that student.

(2) In the case of a written arrangement between eligible institutions, the institutions may agree in writing to have any eligible institution in the written arrangement make those calculations and disbursements, and the Secretary does not consider that institution to be a third-party servicer for that arrangement.

(3) The institution that calculates and disburses a student's title IV, HEA program assistance under paragraph (d)(1) or (d)(2) of this section must—

(i) Take into account all the hours in which the student enrolls at each institution that apply to the student's degree or certificate when determining the student's enrollment status and cost of attendance; and (ii) Maintain all records regarding the student's eligibility for and receipt of title IV, HEA program funds.

(e) *Information made available to students.* If an institution enters into a written arrangement described in paragraph (a), (b), or (c) of this section, the institution must provide the information described in § 668.43(a)(12) to enrolled and prospective students.

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

[65 FR 65674, Nov. 1, 2000, as amended at 75 FR 66948, Oct. 29, 2010; 75 FR 67198, Nov. 1, 2010]

§ 668.6 Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation.

(a) [Reserved]

(b) *Disclosures.* (1) For each program offered by an institution under this section, the institution must provide prospective students with—

(i) The occupations (by names and SOC codes) that the program prepares students to enter, along with links to occupational profiles on O*NET or its successor site. If the number of occupations related to the program, as identified by entering the program's full six digit CIP code on the O*NET crosswalk at *http://online.onetcenter.org/crosswalk/* is more than ten, the institution may provide Web links to a representative sample of the identified occupations (by name and SOC code) for which its graduates typically find employment within a few years after completing the program;

(ii) The on-time graduation rate for students completing the program, as provided under paragraph (c) of this section;

(iii) The tuition and fees it charges a student for completing the program within normal time as defined in § 668.41(a), the typical costs for books and supplies (unless those costs are included as part of tuition and fees), and the cost of room and board, if applicable. The institution may include information on other costs, such as transportation and living expenses, but it must provide a Web link, or access, to the program cost information the institutions makes available under § 668.43(a);

(iv) The placement rate for students completing the program, as determined under a methodology developed by the National Center for Education Statistics (NCES) when that rate is available. In the meantime, beginning on July 1, 2011, if the institution is required by its accrediting agency or State to calculate a placement rate on a program basis, it must disclose the rate under this section and identify the accrediting agency or State agency under whose requirements the rate was calculated. If the accrediting agency or State requires an institution to calculate a placement rate at the institutional level or other than a program basis, the institution must use the accrediting agency or State methodology to calculate a placement rate for the program and disclose that rate; and

(v) The median loan debt incurred by students who completed the program as provided by the Secretary, as well as any other information the Secretary provided to the institution about that program. The institution must identify separately the median loan debt from

title IV, HEA program loans, and the median loan debt from private educational loans and institutional financing plans.

(2) For each program, the institution must—

(i) Include the information required under paragraph (b)(1) of this section in promotional materials it makes available to prospective students and post this information on its Web site;

(ii) Prominently provide the information required under paragraph (b)(1) of this section in a simple and meaningful manner on the home page of its program Web site, and provide a prominent and direct link on any other Web page containing general, academic, or admissions information about the program, to the single Web page that contains all the required information;

(iii) Display the information required under paragraph (b)(1) of this section on the institution's Web site in an open format that can be retrieved, downloaded, indexed, and searched by commonly used Web search applications. An open format is one that is platform-independent, is machine-readable, and is made available to the public without restrictions that would impede the reuse of that information; and

(iv) Use the disclosure form issued by the Secretary to provide the information in paragraph (b)(1), and other information, when that form is available.

(c) *On-time completion rate.* An institution calculates an on-time completion rate for each program subject to this section by—

(1) Determining the number of students who completed the program during the most recently completed award year;

(2) Determining the number of students in paragraph (c)(1) of this section who completed the program within normal time, as defined under § 668.41(a), regardless of whether the students transferred into the program or changed programs at the institution. For example, the normal time to complete an associate degree is two years and this timeframe applies to all students in the program. If a student transfers into the program, regardless of the number of credits the institution accepts from the student's attendance at the prior institution, those transfer credits have no bearing on the two-year timeframe. The student would still have two years to complete from the date he or she began attending the two-year program. To be counted as completing on time, a student who changes programs at the institution and begins attending the two-year program must complete within the two-year timeframe beginning from the date the student began attending the prior program; and

(3) Dividing the number of students who completed the program within normal time, as determined under paragraph (c)(2) of this section, by the total number of students who completed the program, as determined under paragraph (c)(1) of this section, and multiplying the result by 100.

(d) *Sunset provisions.* Institutions must comply with the requirements of this section through December 31, 2016.

(Approved by the Office of Management and Budget under control number 1845–NEW1)

(Authority: 20 U.S.C. 1001, 1002, 1088)

[75 FR 66948, Oct. 29, 2010, as amended at 79 FR 65006, Oct. 31, 2014]

EFFECTIVE DATE NOTE: At 84 FR 31452, July 1, 2019, § 668.6 is removed and reserved, effective July 1, 2020.

§ 668.7 [Reserved]

§ 668.8 Eligible program.

(a) *General.* An eligible program is an educational program that—

(1) Is provided by a participating institution; and

(2) Satisfies the other relevant requirements contained in this section.

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

(1) The Secretary considers the ''equivalent of an associate degree'' to be—

(i) An associate degree; or

(ii) The successful completion of at least a two-year program that is acceptable for full credit toward a bachelor's degree and qualifies a student for admission into the third year of a bachelor's degree program;

(2) A week is a consecutive seven-day period; and

(3)(i) The Secretary considers that an institution provides one week of instructional time in an academic program during any week the institution provides at least one day of regularly scheduled instruction or examinations, or, after the last scheduled day of classes for a term or a payment period, at least one day of study for final examinations.

(ii) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

(c) *Institution of higher education.* An eligible program provided by an institution of higher education must—

(1) Lead to an associate, bachelor's, professional, or graduate degree;

(2) Be at least a two-academic-year program that is acceptable for full credit toward a bachelor's degree; or

(3) Be at least a one-academic-year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation.

(d) *Proprietary institution of higher education and postsecondary vocational institution.* An eligible program provided by a proprietary institution of higher education or postsecondary vocational institution—

(1)(i) Must require a minimum of 15 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Must be at least 600 clock hours, 16 semester or trimester hours, or 24 quarter hours;

(iii) Must provide undergraduate training that prepares a student for gainful employment in a recognized occupation; and

(iv) May admit as regular students persons who have not completed the equivalent of an associate degree;

(2) Must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours, 8 semester or trimester hours, or 12 quarter hours;

(iii) Provide training that prepares a student for gainful employment in a recognized occupation as provided under subpart Q of this part; and

(iv)(A) Be a graduate or professional program; or

(B) Admit as regular students only persons who have completed the equivalent of an associate degree;

(3) For purposes of the FFEL and Direct Loan programs only, must—

(i) Require a minimum of 10 weeks of instruction, beginning on the first day of classes and ending on the last day of classes or examinations;

(ii) Be at least 300 clock hours but less than 600 clock hours;

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation as provided under subpart Q of this part;

(iv) Admit as regular students some persons who have not completed the equivalent of an associate degree; and

(v) Satisfy the requirements of paragraph (e) of this section; or

(4) For purposes of a proprietary institution of higher education only, is a program leading to a baccalaureate degree in liberal arts, as defined in 34 CFR 600.5(e), that—

(i) Is provided by an institution that is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) The institution has provided continuously since January 1, 2009.

(e) *Qualitative factors.* (1) An educational program that satisfies the requirements of paragraphs (d)(3)(i) through (iv) of this section qualifies as an eligible program only if—

(i) The program has a substantiated completion rate of at least 70 percent, as calculated under paragraph (f) of this section;

(ii) The program has a substantiated placement rate of at least 70 percent, as calculated under paragraph (g) of this section;

(iii) The number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares students, as established by the State in which the program is offered, if the State has established such a requirement, or as established by any Federal agency; and

(iv) The program has been in existence for at least one year. The Secretary considers an educational program to have been in existence for at least one year only if an institution has been legally authorized to provide, and has continuously provided, the program during the 12 months (except for normal vacation periods and, at the discretion of the Secretary, periods when the institution closes due to a natural disaster that directly affects the institution or the institution's students) preceding the date on which the institution applied for eligibility for that program.

(2) An institution shall substantiate the calculation of its completion and placement rates by having the certified public accountant who prepares its audit report required under § 668.23 report on the institution's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA).

(f) *Calculation of completion rate.* An institution shall calculate its completion rate for an educational program for any award year as follows:

(1) Determine the number of regular students who were enrolled in the program during the award year.

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

(3) Subtract from the total obtained under paragraph (f)(2) of this section the number of students who were enrolled in the program at the end of that award year.

(4) Determine the number of regular students who, during that award year, received within 150 percent of the published length of the educational program the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(5) Divide the number determined under paragraph (f)(4) of this section by the total obtained under paragraph (f)(3) of this section.

(g) *Calculation of placement rate.* (1) An institution shall calculate its placement rate for an educational program for any award year as follows:

(i) Determine the number of students who, during the award year, received the degree, certificate, or other recognized educational credential awarded for successfully completing the program.

(ii) Of the total obtained under paragraph (g)(1)(i) of this section, determine the number of students who, within 180 days of the day they received their degree, certificate, or other recognized educational credential, obtained gainful employment in the recognized occupation for which they were trained or in a related comparable recognized occupation and, on the date of this calculation, are employed, or have been employed, for at least 13 weeks following receipt of the credential from the institution.

(iii) Divide the number of students determined under paragraph (g)(1)(ii) of this section by the total obtained under paragraph (g)(1)(i) of this section.

(2) An institution shall document that each student described in paragraph (g)(1)(ii) of this section obtained gainful employment in the recognized occupation for which he or she was trained or in a related comparable recognized occupation. Examples of satisfactory documentation of a student's gainful employment include, but are not limited to—

(i) A written statement from the student's employer;

(ii) Signed copies of State or Federal income tax forms; and

(iii) Written evidence of payments of Social Security taxes.

(h) *Eligibility for Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, and FSEOG Programs.* In addition to satisfying other relevant provisions of the section—

(1) An educational program qualifies as an eligible program for purposes of the Federal Pell Grant Program only if the educational program is an undergraduate program or a postbaccalaureate teacher certificate

or licensing program as described in 34 CFR 690.6(c);

(2) An educational program qualifies as an eligible program for purposes of the ACG, National SMART Grant, and FSEOG programs only if the educational program is an undergraduate program; and

(3) An educational program qualifies as an eligible program for purposes of the TEACH Grant program if it satisfies the requirements of the definition of TEACH Grant-eligible program in 34 CFR 686.2(d).

(i) *Flight training.* In addition to satisfying other relevant provisions of this section, for a program of flight training to be an eligible program, it must have a current valid certification from the Federal Aviation Administration.

(j) *English as a second language (ESL).* (1) In addition to satisfying the relevant provisions of this section, an educational program that consists solely of instruction in ESL qualifies as an eligible program if—

(i) The institution admits to the program only students who the institution determines need the ESL instruction to use already existing knowledge, training, or skills; and

(ii) The program leads to a degree, certificate, or other recognized educational credential.

(2) An institution shall document its determination that ESL instruction is necessary to enable each student enrolled in its ESL program to use already existing knowledge, training, or skills with regard to the students that it admits to its ESL program under paragraph (j)(1)(i) of this section.

(3) An ESL program that qualifies as an eligible program under this paragraph is eligible for purposes of the Federal Pell Grant Program only.

(k) *Undergraduate educational program in credit hours.* If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (l) of this section to determine whether that program satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and the number of credit hours in that educational program for purposes of the title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary provided that—

(i) The institution's degree requires at least two academic years of study; and

(ii) The institution demonstrates that students enroll in, and graduate from, the degree program.

(l) *Formula.* (1) Except as provided in paragraph (l)(2) of this section, for purposes of determining whether a program described in paragraph (k) of this section satisfies the requirements contained in paragraph (c)(3) or (d) of this section, and determining the number of credit hours in that educational program with regard to the title IV, HEA programs—

(i) A semester hour must include at least 37.5 clock hours of instruction;

(ii) A trimester hour must include at least 37.5 clock hours of instruction; and

(iii) A quarter hour must include at least 25 clock hours of instruction.

(2) The institution's conversions to establish a minimum number of clock hours of instruction per credit may be less than those specified in paragraph (l)(1) of this section if the institution's designated accrediting agency, or recognized State agency for the approval of public postsecondary vocational institutions for participation in the title IV, HEA programs, has not identified any deficiencies with the institution's policies and procedures, or their implementation, for determining the credit hours that the institution awards for programs and courses, in accordance with 34 CFR 602.24(f) or, if applicable, 34 CFR 603.24(c), so long as—

(i) The institution's student work outside of class combined with the clock hours of instruction meet or exceed the numeric requirements in paragraph (l)(1) of this section; and

(ii)(A) A semester hour must include at least 30 clock hours of instruction;

(B) A trimester hour must include at least 30 clock hours of instruction; and

(C) A quarter hour must include at least 20 hours of instruction.

(m) An otherwise eligible program that is offered in whole or in part through telecommunications is eligible for title IV, HEA program purposes if the program is offered by an institution, other than a foreign institution, that has been evaluated and is accredited for its effective delivery of distance education programs by an accrediting agency or association that—

(1) Is recognized by the Secretary under subpart 2 of part H of the HEA; and

(2) Has accreditation of distance education within the scope of its recognition.

(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.

(Authority: 20 U.S.C. 1070a, 1070a–1, 1070b, 1070c–1, 1070c–2, 1070g, 1085, 1087aa–1087hh, 1088, 1091; 42 U.S.C. 2753)

[59 FR 22421, Apr. 29, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 668.8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

EFFECTIVE DATE NOTE: At 84 FR 31452, July 1, 2019, § 668.8 is amended by revising paragraphs (d)(2)(iii) and (d)(3)(iii), effective July 1, 2020. For the convenience of the user, the revised text is set forth as follows:

§ 668.8 Eligible program.

* * * * *

(d) * * *

(2) * * *

(iii) Provide training that prepares a student for gainful employment in a recognized occupation; and

(3) * * *

(iii) Provide undergraduate training that prepares a student for gainful employment in a recognized occupation;

§ 668.9 Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance.

(a) In determining the amount of Title IV, HEA program assistance that a student who is enrolled in a program described in § 668.8(k) is eligible to receive, the institution shall apply the formula contained in § 668.8(l) to determine the number of semester, trimester, or quarter hours in that program, if the institution measures academic progress in that program in semester, trimester, or quarter hours.

(b) Notwithstanding paragraph (a) of this section, a public or private nonprofit hospital-based school of nursing that awards a diploma at the completion of the school's program of education is not required to apply the formula contained in § 668.8(l) to determine the number of semester, trimester, or quarter hours in that program for purposes of calculating Title IV, HEA program assistance.

(Authority: 20 U.S.C. 1082, 1085, 1088, 1091, 1141)

[59 FR 61179, Nov. 29, 1994]

§ 668.10 Direct assessment programs.

(a)(1) A *direct assessment program* is an instructional program that, in lieu of credit hours or clock hours as a measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others. The assessment must be consistent with the accreditation of the institution or program utilizing the results of the assessment.

(2) Direct assessment of student learning means a measure by the institution of what a student knows and can do in terms of the body of knowledge making up the educational program. These measures provide evidence that a student has command of a specific subject, content area, or skill or that the student demonstrates a specific quality such as creativity, analysis or synthesis associated with the subject matter of the program. Examples of direct measures include projects, papers, examinations, presentations, performances, and portfolios.

(3) All regulatory requirements in this chapter that refer to credit or clock hours as a measurement apply to direct assessment programs. Because a direct assessment program does not utilize credit or clock hours as a measure of student learning, an institution must establish a methodology to reasonably equate the direct assessment program (or the direct assessment portion of any program, as applicable) to credit or clock hours for the purpose of complying with applicable regulatory requirements. The institution must provide a factual basis satisfactory to the Secretary for its claim that the program or portion of the program is equivalent to a specific number of credit or clock hours.

(i) An academic year in a direct assessment program is a period of instructional time that consists of a minimum of 30 weeks of instructional time during which, for an undergraduate educational program, a full-time student is expected to complete the equivalent of at least 24 semester or trimester credit hours, 36 quarter credit hours or 900 clock hours.

(ii) A payment period in a direct assessment program for which equivalence in credit hours has been established must be determined under the requirements in § 668.4(a), (b), or (c), as applicable, using the academic year determined in accordance with paragraph (a)(3)(i) of this section (or the portion of that academic year comprising or remaining in the program). A payment period in a direct assessment program for which equivalence in clock hours has been established must be determined under the requirements in § 668.4(c), using the academic year determined in accordance with paragraph (a)(3)(i) of this section (or the portion of that academic year comprising or remaining in the program).

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

(iv) A full-time student in a direct assessment program is an enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in the program. However, for an undergraduate student, the institution's minimum standard must equal or exceed the minimum full-time requirements specified in the definition of *full-time student* in § 668.2 based on the credit or clock hour equivalency established by the institution for the direct assessment program.

(b) An institution that offers a direct assessment program must apply to the Secretary to have that program determined to be an eligible program for title IV, HEA program purposes. The institution's application must provide information satisfactory to the Secretary that includes—

(1) A description of the educational program, including the educational credential offered (degree level or certificate) and the field of study;

(2) A description of how the assessment of student learning is done;

(3) A description of how the direct assessment program is structured, including information about how and when the institution determines on an individual basis what each student enrolled in the program needs to learn;

(4) A description of how the institution assists students in gaining the knowledge needed to pass the assessments;

(5) The number of semester or quarter credit hours, or clock hours, that

are equivalent to the amount of student learning being directly assessed for the certificate or degree, as required by paragraph (b)(3) of this section;

(6) The methodology the institution uses to determine the number of credit or clock hours to which the program is equivalent;

(7) The methodology the institution uses to determine the number of credit or clock hours to which the portion of a program an individual student will need to complete is equivalent;

(8) Documentation from the institution's accrediting agency indicating that the agency has evaluated the institution's offering of direct assessment program(s) and has included the program(s) in the institution's grant of accreditation;

(9) Documentation from the accrediting agency or relevant state licensing body indicating agreement with the institution's claim of the direct assessment program's equivalence in terms of credit or clock hours; and

(10) Any other information the Secretary may require to determine whether to approve the institution's application.

(c) To be an eligible program, a direct assessment program must meet the requirements in § 668.8 including, if applicable, minimum program length and qualitative factors.

(d) Notwithstanding paragraphs (a) through (c) of this section, no program offered by a foreign institution that involves direct assessment will be considered to be an eligible program under § 668.8.

(e) A direct assessment program may use learning resources (e.g., courses or portions of courses) that are provided by entities other than the institution providing the direct assessment program without regard to the limitations on contracting for part of an educational program in § 668.5(c)(3).

(f) Title IV, HEA program funds may be used only for learning that results from instruction provided, or overseen, by the institution, not for the portion of the program that the student has demonstrated mastery of prior to enrollment in the program or tests of learning that are not associated with educational activities overseen by the institution.

(g) Title IV, HEA program eligibility with respect to direct assessment programs is limited to direct assessment programs approved by the Secretary. Title IV, HEA program funds may not be used for—

(1) the course of study described in § 668.32(a)(1)(ii) and (iii) if offered by direct assessment, or

(2) remedial coursework described in § 668.20 offered by direct assessment. However, remedial instruction that is offered in credit or clock hours in conjunction with a direct assessment program is eligible for title IV, HEA program funds.

(h) The Secretary's approval of a direct assessment program expires on the date that the institution changes one or more aspects of the program described in the institution's application submitted under paragraph (b) of this section. To maintain program eligibility, the institution must obtain prior approval from the Secretary through reapplication under paragraph (b) of this section that sets forth the revisions proposed.

[71 FR 45693, Aug. 9, 2006, as amended at 71 FR 64397, Nov. 1, 2006; 72 FR 62026, Nov. 1, 2007]

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

SOURCE: 52 FR 45727, Dec. 1, 1987, unless otherwise noted.

§ 668.11 Scope.

(a) This subpart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program or with applicable standards in this subpart by a third-party servicer that contracts with the institution may subject the institution or servicer, or both, to proceedings under subpart G of this part. These proceedings may lead to any of the following actions:

(1) An emergency action.

(2) The imposition of a fine.

(3) The limitation, suspension, or termination of the participation of the institution in a Title IV, HEA program.

(4) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

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

[59 FR 22423, Apr. 29, 1994]

§ 668.12 [Reserved]

§ 668.13 Certification procedures.

(a) *Requirements for certification.* (1) The Secretary certifies an institution to participate in the title IV, HEA programs if the institution qualifies as an eligible institution under 34 CFR part 600, meets the standards of this subpart and 34 CFR part 668, subpart L, and satisfies the requirements of paragraph (a)(2) of this section.

(2) Except as provided in paragraph (a)(3) of this section, if an institution wishes to participate for the first time in the title IV, HEA programs or has undergone a change in ownership that results in a change in control as described in 34 CFR 600.31, the institution must require the following individuals to complete title IV, HEA program training provided or approved by the Secretary no later than 12 months after the institution executes its program participation agreement under § 668.14:

(i) The individual the institution designates under § 668.16(b)(1) as its title IV, HEA program administrator.

(ii) The institution's chief administrator or a high level institutional official the chief administrator designates.

(3)(i) An institution may request the Secretary to waive the training requirement for any individual described in paragraph (a)(2) of this section.

(ii) When the Secretary receives a waiver request under paragraph (a)(3)(i) of this section, the Secretary may grant or deny the waiver, require another institutional official to take the training, or require alternative training.

(b) *Period of participation.* (1) If the Secretary certifies that an institution meets the standards of this subpart, the Secretary also specifies the period for which the institution may participate in a title IV, HEA program. An institution's period of participation expires no more than six years after the date that the Secretary certifies that the institution meets the standards of this subpart, except that—

(i) The period of participation for a private, for profit foreign institution expires three years after the date of the Secretary's certification; and

(ii) The Secretary may specify a shorter period.

(2) Provided that an institution has submitted an application for a renewal of certification that is materially complete at least 90 days prior to the expiration of its current period of participation, the institution's existing certification will be extended on a month to month basis following the expiration of the institution's period of participation until the end of the month in which the Secretary issues a decision on the application for recertification.

(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 and subpart L of this part 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 at the start of a fiscal year after it did not derive at least 10 percent of its revenue for its preceding fiscal year from sources other than Title IV, HEA program funds, as required under § 668.14(b)(16).

(2) If the Secretary provisionally certifies an institution, the Secretary also specifies the period for which the institution may participate in a Title IV, HEA program. Except as provided in paragraphs (c) (3) and (4) of this section, a provisionally certified institution's period of participation expires—

(i) Not later than the end of the first complete award year following the date on which the Secretary provisionally certified the institution under paragraph (c)(1)(i) of this section;

(ii) Not later than the end of the third complete award year following the date on which the Secretary provisionally certified the institution under paragraphs (c)(1)(ii), (iii), (iv) or (e)(2) of this section; and

(iii) If the Secretary provisionally certified the institution under paragraph (c)(1)(v) of this section, not later than 18 months after the date that the Secretary withdrew recognition from the institutions nationally recognized accrediting agency.

(3) Notwithstanding the maximum periods of participation provided for in paragraph (c)(2) of this section, if the Secretary provisionally certifies an institution, the Secretary may specify a shorter period of participation for that institution.

(4) For the purposes of this section, ''provisional certification'' means that the Secretary certifies that an institution has demonstrated to the Secretary's satisfaction that the institution—

(i) Is capable of meeting the standards of this subpart within a specified period; and

(ii) Is able to meet the institution's responsibilities under its program participation agreement, including compliance with any additional conditions specified in the institution's program participation agreement that the Secretary requires the institution to meet in order for the institution to participate under provisional certification.

(d) *Revocation of provisional certification.* (1) If, before the expiration of a provisionally certified institution's period of participation in a Title IV, HEA program, the Secretary determines that the institution is unable to meet its responsibilities under its program participation agreement, the Secretary may revoke the institution's provisional certification for participation in that program.

(2)(i) If the Secretary revokes the provisional certification of an institution under paragraph (d)(1) of this section, the Secretary sends the institution a notice by certified mail, return receipt requested. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) The revocation takes effect on the date that the Secretary mails the notice to the institution.

(iii) The notice states the basis for the revocation, the consequences of the revocation to the institution, and that the institution may request the Secretary to reconsider the revocation. The consequences of a revocation are described in § 668.26.

(3)(i) An institution may request reconsideration of a revocation under this section by submitting to the Secretary, within 20 days of the institution's receipt of the Secretary's notice, written evidence that the revocation is unwarranted. The institution must file the request with the Secretary by hand-delivery, mail, or facsimile transmission.

(ii) The filing date of the request is the date on which the request is—

(A) Hand-delivered;

(B) Mailed; or

(C) Sent by facsimile transmission.

(iii) Documents filed by facsimile transmission must be transmitted to the Secretary in accordance with instructions provided by the Secretary in the notice of revocation. An institution filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Secretary.

(iv) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4)(i) The designated department official making the decision concerning an institution's request for reconsideration of a revocation is different from, and not subject to supervision by, the official who initiated the revocation of the institution's provisional certification. The deciding official promptly considers an institution's request for reconsideration of a revocation and notifies the institution, by certified mail, return receipt requested, of the final decision. The Secretary also may transmit the notice by other, more expeditious means, if practical.

(ii) If the Secretary determines that the revocation is warranted, the Secretary's notice informs the institution that the institution may apply for reinstatement of participation only after the later of the expiration of—

(A) Eighteen months after the effective date of the revocation; or

(B) A debarment or suspension of the institution under Executive Order (E.O.) 12549 (3 CFR, 1986 comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(iii) If the Secretary determines that the revocation of the institution's provisional certification is unwarranted, the Secretary's notice informs the institution that the institution's provisional certification is reinstated, effective on the date that the Secretary's original revocation notice was mailed, for a specified period of time.

(5)(i) The mailing date of a notice of revocation or a request for reconsideration of a revocation is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(ii) The date on which a request for reconsideration of a revocation is submitted is—

(A) If the request was sent by a delivery service other than the U.S. Postal Service, the date evidenced on the original receipt by that service; and

(B) If the request was sent by facsimile transmission, the date that the document is recorded as received by facsimile equipment that receives the transmission.

(Approved by the Office of Management and Budget under control number 1845–0537)

(Authority: 20 U.S.C. 1099c and E.O. 12549 (3 CFR, 1989 Comp., p. 189) and E.O. 12689 (3 CFR, 1989 Comp., p. 235))

[59 FR 22424, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 60 FR 34431, June 30, 1995; 62 FR 62876, Nov. 25, 1997; 63 FR 40623, July 29, 1998; 64 FR 58617, Oct. 29, 1999; 65 FR 65675, Nov. 1, 2000; 74 FR 55934, Oct. 29, 2009; 75 FR 67198, Nov. 1, 2010]

§ 668.14 Program participation agreement.

(a)(1) An institution may participate in any Title IV, HEA program, other than the LEAP and NEISP programs, only if the institution enters into a written program participation agreement with the Secretary, on a form approved by the Secretary. A program participation agreement conditions the initial and continued participation of an eligible institution in any Title IV, HEA program upon compliance with the provisions of this part, the individual program regulations, and any additional conditions specified in the program participation agreement that the Secretary requires the institution to meet.

(2) An institution's program participation agreement applies to each branch campus and other location of the institution that meets the applicable requirements of this part unless otherwise specified by the Secretary.

(b) By entering into a program participation agreement, an institution agrees that—

(1) It will comply with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement that the institution will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(2) As a fiduciary responsible for administering Federal funds, if the institution is permitted to request funds under a Title IV, HEA program advance payment method, the institution will time its requests for funds under the program to meet the institution's immediate Title IV, HEA program needs;

(3) It will not request from or charge any student a fee for processing or handling any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance;

(4) It will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under the Title IV, HEA programs, together with assurances that the institution will provide, upon request and in a timely manner, information relating to the administrative capability and financial responsibility of the institution to—

(i) The Secretary;

(ii) A guaranty agency, as defined in 34 CFR part 682, that guarantees loans made under the Federal Stafford Loan and Federal PLUS programs for attendance at the institution or any of the institution's branch campuses or other locations;

(iii) The nationally recognized accrediting agency that accredits or preaccredits the institution or any of the institution's branch campuses, other locations, or educational programs;

(iv) The State agency that legally authorizes the institution and any branch campus or other location of the institution to provide postsecondary education; and

(v) In the case of a public postsecondary vocational educational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, that State agency;

(5) It will comply with the provisions of § 668.15 relating to factors of financial responsibility;

(6) It will comply with the provisions of § 668.16 relating to standards of administrative capability;

(7) It will submit reports to the Secretary and, in the case of an institution participating in the Federal Stafford Loan, Federal PLUS, or the Federal Perkins Loan Program, to holders of loans made to the institution's students under that program at such times and containing such information as the Secretary may reasonably require to carry out the purpose of the Title IV, HEA programs;

(8) It will not provide any statement to any student or certification to any lender in the case of an FFEL Program loan, or origination record to the Secretary in the case of a Direct Loan Program loan that qualifies the student or parent for a loan or loans in excess of the amount that the student or parent is eligible to borrow in accordance with sections 425(a), 428(a)(2), 428(b)(1)(A) and (B), 428B, 428H, and 455(a) of the HEA;

(9) It will comply with the requirements of subpart D of this part concerning institutional and financial assistance information for students and prospective students;

(10) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, it will make available to prospective students, at or before the time that those students apply for enrollment—

(i) The most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements; and

(ii) Relevant State licensing requirements of the State in which the institution is located for any job for which an educational program offered by the institution is designed to prepare those prospective students;

(11) In the case of an institution participating in the FFEL program, the institution will inform all eligible borrowers, as defined in 34 CFR part 682, enrolled in the institution about the availability and eligibility of those borrowers for State grant assistance from the State in which the institution is located, and will inform borrowers from another State of the source of further information concerning State grant assistance from that State;

(12) It will provide the certifications described in paragraph (c) of this section;

(13) In the case of an institution whose students receive financial assistance pursuant to section 484(d) of the HEA, the institution will make available to those students a program proven successful in assisting students in obtaining the recognized equivalent of a high school diploma;

(14) It will not deny any form of Federal financial aid to any eligible student solely on the grounds that the student is participating in a program of study abroad approved for credit by the institution;

(15)(i) Except as provided under paragraph (b)(15)(ii) of this section, the institution will use a default management plan approved by the Secretary with regard to its administration of the FFEL or Direct Loan programs, or both for at least the first two years of its participation in those programs, if the institution—

(A) Is participating in the FFEL or Direct Loan programs for the first time; or

(B) Is an institution that has undergone a change of ownership that results in a change in control and is participating in the FFEL or Direct Loan programs.

(ii) The institution does not have to use an approved default management plan if—

(A) The institution, including its main campus and any branch campus, does not have a cohort default rate in excess of 10 percent; and

(B) The owner of the institution does not own and has not owned any other institution that had a cohort default rate in excess of 10 percent while that owner owned the institution.

(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);

(17) The Secretary, guaranty agencies and lenders as defined in 34 CFR part 682, nationally recognized accrediting agencies, the Secretary of Veterans Affairs, State agencies recognized under 34 CFR part 603 for the approval of public postsecondary vocational education, and State agencies that legally authorize institutions and branch campuses or other locations of institutions to provide postsecondary education, have the authority to share with each other any information pertaining to the institution's eligibility for or participation in the Title IV, HEA programs or any information on fraud and abuse;

(18) It will not knowingly—

(i) Employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(ii) Contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; or

(iii) Contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(B) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds;

(19) It will complete, in a timely manner and to the satisfaction of the Secretary, surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal collection effort, as designated by the Secretary, regarding data on postsecondary institutions;

(20) In the case of an institution that is co-educational and has an intercollegiate athletic program, it will comply with the provisions of § 668.48;

(21) It will not impose any penalty, including, but not limited to, the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds for which interest or other charges are assessed, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a Title IV, HEA program loan due to compliance with statutory and regulatory requirements of or applicable to the Title IV, HEA programs, or delays attributable to the institution;

(22)(i) It will not provide any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid, to any person or entity who is engaged in any student recruitment or admission activity, or in making decisions regarding the award of title IV, HEA program funds.

(A) The restrictions in paragraph (b)(22) of this section do not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(B) For the purpose of paragraph (b)(22) of this section, an employee who receives multiple adjustments to compensation in a calendar year and is engaged in any student enrollment or admission activity or in making decisions regarding the award of title IV, HEA program funds is considered to have received such adjustments based upon success in securing enrollments or the award of financial aid if those adjustments create compensation that is based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid.

(ii) Notwithstanding paragraph (b)(22)(i) of this section, eligible institutions, organizations that are contractors to eligible institutions, and other entities may make—

(A) Merit-based adjustments to employee compensation provided that such adjustments are not based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid; and

(B) Profit-sharing payments so long as such payments are not provided to any person or entity engaged in student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

(iii) As used in paragraph (b)(22) of this section,

(A) *Commission, bonus, or other incentive payment* means a sum of money or something of value, other than a fixed salary or wages, paid to or given to a person or an entity for services rendered.

(B) *Securing enrollments or the award of financial aid* means activities that a person or entity engages in at any point in time through completion of an educational program for the purpose of the admission or matriculation of students for any period of time or the award of financial aid to students.

(*1*) These activities include contact in any form with a prospective student, such as, but not limited to—contact through preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution, attendance at such an appointment, or involvement in a prospective student's signing of an enrollment agreement or financial aid application.

(*2*) These activities do not include making a payment to a third party for the provision of student contact information for prospective students provided that such payment is not based on—

(*i*) Any additional conduct or action by the third party or the prospective students, such as participation in preadmission or advising activities, scheduling an appointment to visit the enrollment office or any other office of the institution or attendance at such an appointment, or the signing, or being involved in the signing, of a prospective student's enrollment agreement or financial aid application; or

(*ii*) The number of students (calculated at any point in time of an educational program) who apply for enrollment, are awarded financial aid, or are

enrolled for any period of time, including through completion of an educational program.

(C) *Entity or person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid* means—

(*1*) With respect to an entity engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any institution or organization that undertakes the recruiting or the admitting of students or that makes decisions about and awards title IV, HEA program funds; and

(*2*) With respect to a person engaged in any student recruitment or admission activity or in making decisions about the award of financial aid, any employee who undertakes recruiting or admitting of students or who makes decisions about and awards title IV, HEA program funds, and any higher level employee with responsibility for recruitment or admission of students, or making decisions about awarding title IV, HEA program funds.

(D) *Enrollment* means the admission or matriculation of a student into an eligible institution.

(23) It will meet the requirements established pursuant to part H of Title IV of the HEA by the Secretary and nationally recognized accrediting agencies;

(24) It will comply with the requirements of § 668.22;

(25) It is liable for all—

(i) Improperly spent or unspent funds received under the Title IV, HEA programs, including any funds administered by a third-party servicer; and

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

(26) If an educational program offered by the institution is required to prepare a student for gainful employment in a recognized occupation, the institution must—

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency;

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student; and

(iii) Provide for that program the certification required in § 668.414.

(27) In the case of an institution participating in a Title IV, HEA loan program, the institution—

(i) Will develop, publish, administer, and enforce a code of conduct with respect to loans made, insured or guaranteed under the Title IV, HEA loan programs in accordance with 34 CFR 601.21; and

(ii) Must inform its officers, employees, and agents with responsibilities with respect to loans made, insured or guaranteed under the Title IV, HEA loan programs annually of the provisions of the code required under paragraph (b)(27) of this section;

(28) For any year in which the institution has a preferred lender arrangement (as defined in 34 CFR 601.2(b)), it will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list in print or other medium, of the specific lenders for loans made, insured, or guaranteed under title IV of the HEA or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making such a list, the institution must comply with the requirements in 34 CFR 682.212(h) and 34 CFR 601.10;

(29)(i) It will, upon the request of an enrolled or admitted student who is an applicant for a private education loan (as defined in 34 CFR 601.2(b)), provide to the applicant the self-certification form required under 34 CFR 601.11(d) and the information required to complete the form, to the extent the institution possesses such information, including—

(A) The applicant's cost of attendance at the institution, as determined by the institution under part F of title IV of the HEA;

(B) The applicant's estimated financial assistance, including amounts of financial assistance used to replace the expected family contribution as determined by the institution in accordance with title IV, for students who have completed the Free Application for Federal Student Aid; and

(C) The difference between the amounts under paragraphs (b)(29)(i)(A) and (29)(i)(B) of this section, as applicable.

(ii) It will, upon the request of the applicant, discuss with the applicant the availability of Federal, State, and institutional student financial aid;

(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;

(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; and

(32) The institution will provide all enrolled students with a closed school discharge application and a written disclosure, describing the benefits and consequences of a closed school discharge as an alternative to completing their educational program through a teach-out agreement, as defined in 34 CFR 602.3, immediately upon submitting a teach-out plan after the occurrence of any of the following events:

(i) The initiation by the Secretary of an action under 34 CFR 600.41 or subpart G of this part or the initiation of an emergency action under § 668.83, to terminate the participation of an institution in any title IV, HEA program.

(ii) The occurrence of any of the events in paragraph (b)(31)(ii) through (v) of this section.

(c) In order to participate in any Title IV, HEA program (other than the LEAP and NEISP programs), the institution must certify that it—

(1) Has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at the institution; and

(2)(i) Has established a campus security policy in accordance with section 485(f) of the HEA; and

(ii) Has complied with the disclosure requirements of § 668.47 as required by section 485(f) of the HEA.

(d)(1) The institution, if located in a State to which section 4(b) of the National Voter Registration Act (42 U.S.C. 1973gg–2(b)) does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make those forms widely available to students at the institution.

(2) The institution must request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the State, the institution is not liable for not meeting the requirements of this section during that election year.

(3) This paragraph applies to elections as defined in section 301(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1)), and includes the election for Governor or other chief executive within such State.

(e)(1) A program participation agreement becomes effective on the date that the Secretary signs the agreement.

(2) A new program participation agreement supersedes any prior program participation agreement between the Secretary and the institution.

(f)(1) Except as provided in paragraphs (g) and (h) of this section, the Secretary terminates a program participation agreement through the proceedings in subpart G of this part.

(2) An institution may terminate a program participation agreement.

(3) If the Secretary or the institution terminates a program participation agreement under paragraph (f) of this section, the Secretary establishes the termination date.

(g) An institution's program participation agreement automatically expires on the date that—

(1) The institution changes ownership that results in a change in control as determined by the Secretary under 34 CFR part 600; or

(2) The institution's participation ends under the provisions of § 668.26(a)(1), (2), (4), or (7).

(h) An institution's program participation agreement no longer applies to or covers a location of the institution as of the date on which that location ceases to be a part of the participating institution.

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

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, and 1141)

[59 FR 22425, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 63 FR 40623, July 29, 1998; 64 FR 58617, Oct. 29, 1999; 64 FR 59038, Nov. 1, 1999; 65 FR 38729, June 22, 2000; 65 FR 65637, Nov. 1, 2000; 67 FR 67072, Nov. 1, 2002; 73 FR 35492, June 23, 2008; 74 FR 55648, Oct. 28, 2009; 74 FR 55934, Oct. 29, 2009; 76 FR 66950, Oct. 29, 2010; 76 FR 20536, Apr. 13, 2011; 79 FR 65007, Oct. 31, 2014; 81 FR 76070, Nov. 1, 2016]

§ 668.15 Factors of financial responsibility.

(a) *General.* To begin and to continue to participate in any Title IV, HEA program, an institution must demonstrate to the Secretary that the institution is financially responsible under the requirements established in this section.

(b) *General standards of financial responsibility.* In general, the Secretary considers an institution to be financially responsible only if it—

(1) Is providing the services described in its official publications and statements;

(2) Is providing the administrative resources necessary to comply with the requirements of this subpart;

(3) Is meeting all of its financial obligations, including but not limited to—

(i) Refunds that it is required to make; and

(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary;

(4) Is current in its debt payments. The institution is not considered current in its debt payments if—

(i) The institution is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statement; or

(ii) the institution fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover those funds;

(5) Except as provided in paragraph (d) of this section, in accordance with procedures established by the Secretary, submits to the Secretary an irrevocable letter of credit, acceptable and payable to the Secretary equal to 25 percent of the total dollar amount of Title IV, HEA program refunds paid by the institution in the previous fiscal year;

(6) Has not had, as part of the audit report for the institution's most recently completed fiscal year—

(i) A statement by the accountant expressing substantial doubt about the institution's ability to continue as a going concern; or

(ii) A disclaimed or adverse opinion by the accountant;

(7) For a for-profit institution—

(i)(A) Demonstrates at the end of its latest fiscal year, an acid test ratio of at least 1:1. For purposes of this section, the acid test ratio shall be calculated by adding cash and cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio shall exclude all unsecured or uncollateralized related party receivables;

(B) Has not had operating losses in either or both of its two latest fiscal years that in sum result in a decrease in tangible net worth in excess of 10 percent of the institution's tangible net worth at the beginning of the first year of the two-year period. The Secretary may calculate an operating loss for an institution by excluding from net income: extraordinary gains or losses; income or losses from discontinued operations; prior period adjustment; and, the cumulative effect of changes in accounting principle. For purposes of this section, the calculation of tangible net worth shall exclude all assets defined as intangible in accordance with generally accepted accounting principles; and

(C) Had, for its latest fiscal year, a positive tangible net worth. In applying this standard, a positive tangible net worth occurs when the institution's tangible assets exceed its liabilities. The calculation of tangible net worth shall exclude all assets classified as intangible in accordance with the generally accepted accounting principles; or

(ii) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations that are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization;

(8) For a nonprofit institution—

(i)(A) Prepares a classified statement of financial position in accordance with generally accepted accounting principles or provides the required information in notes to the audited financial statements;

(B) Demonstrates at the end of its latest fiscal year, an acid test ratio of at least 1:1. For purposes of this section, the acid test ratio shall be calculated by adding cash and cash equivalents to current accounts receivable and dividing the sum by total current liabilities. The calculation of the acid test ratio shall exclude all unsecured or uncollateralized related party receivables.

(C)(*1*) Has, at the end of its latest fiscal year, a positive unrestricted current fund balance or positive unrestricted net assets. In calculating the unrestricted current fund balance or the unrestricted net assets for an institution, the Secretary may include funds that are temporarily restricted in use by the institution's governing body that can be transferred to the current unrestricted fund or added to net unrestricted assets at the discretion of the governing body; or

(*2*) Has not had, an excess of current fund expenditures over current fund revenues over both of its 2 latest fiscal

years that results in a decrease exceeding 10 percent in either the unrestricted current fund balance or the unrestricted net assets at the beginning of the first year of the 2-year period. The Secretary may exclude from net changes in fund balances for the operating loss calculation: Extraordinary gains or losses; income or losses from discontinued operations; prior period adjustment; and the cumulative effect of changes in accounting principle. In calculating the institution's unrestricted current fund balance or the unrestricted net assets, the Secretary may include funds that are temporarily restricted in use by the institution's governing body that can be transferred to the current unrestricted fund or added to net unrestricted assets at the discretion of the governing body; or

(ii) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations which are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization.

(9) For a public institution—

(i) Has its liabilities backed by the full faith and credit of a State, or by an equivalent governmental entity;

(ii) Has a positive current unrestricted fund balance if reporting under the Single Audit Act;

(iii) Has a positive unrestricted current fund in the State's Higher Education Fund, as presented in the general purpose financial statements;

(iv) Submits to the Secretary, a statement from the State Auditor General that the institution has, during the past year, met all of its financial obligations, and that the institution continues to have sufficient resources to meet all of its financial obligations; or

(v) Demonstrates to the satisfaction of the Secretary that it has currently issued and outstanding debt obligations which are (without insurance, guarantee, or credit enhancement) listed at or above the second highest rating level of credit quality given by a nationally recognized statistical rating organization.

(c) *Past performance of an institution or persons affiliated with an institution.* An institution is not financially responsible if—

(1) A person who exercises substantial control over the institution or any member or members of the person's family alone or together—

(i)(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a Title IV, HEA program requirement; or

(B) Owes a liability for a violation of a Title IV, HEA program requirement; and

(ii) That person, family member, institution, or servicer does not demonstrate that the liability is being repaid in accordance with an agreement with the Secretary; or

(2) The institution has—

(i) Been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency (as defined in 34 CFR part 682) within the preceding five years;

(ii) Had—

(A) An audit finding, during its two most recent audits of its conduct of the Title IV, HEA programs, that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the audit; or

(B) A program review finding, during its two most recent program reviews, of its conduct of the Title IV, HEA programs that resulted in the institution's being required to repay an amount greater than five percent of the funds that the institution received under the Title IV, HEA programs for any award year covered by the program review;

(iii) Been cited during the preceding five years for failure to submit acceptable audit reports required under this part or individual Title IV, HEA program regulations in a timely fashion; or

(iv) Failed to resolve satisfactorily any compliance problems identified in program review or audit reports based upon a final decision of the Secretary

issued pursuant to subpart G or subpart H of this part.

(d) *Exceptions to the general standards of financial responsibility.* (1)(i) An institution is not required to meet the standard in paragraph (b)(5) of this section if the Secretary determines that the institution—

(A)(*1*) Is located in, and is legally authorized to operate within, a State that has a tuition recovery fund that is acceptable to the Secretary and ensures that the institution is able to pay all required refunds; and

(*2*) Contributes to that tuition recovery fund.

(B) Has its liabilities backed by the full faith and credit of the State, or by an equivalent governmental entity; or

(C) As determined under paragraph (g) of this section, demonstrates, to the satisfaction of the Secretary, that for each of the institution's two most recently completed fiscal years, it has made timely refunds to students in accordance with § 668.22(j), and that it has met or exceeded all of the financial responsibility standards in this section that were in effect for the corresponding periods during the two-year period.

(ii) In evaluating an application to approve a State tuition recovery fund to exempt its participating schools from the Federal cash reserve requirements, the Secretary will consider the extent to which the State tuition recovery fund:

(A) Provides refunds to both in-state and out-of-state students;

(B) Allocates all refunds in accordance with the order delineated in § 668.22(i); and

(C) Provides a reliable mechanism for the State to replenish the fund should any claims arise that deplete the funds assets.

(2) The Secretary considers an institution to be financially responsible, even if the institution is not otherwise financially responsible under paragraphs (b)(1) through (4) and (b)(6) through (9) of this section, if the institution—

(i) Submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary equal to not less than one-half of the Title IV, HEA program funds received by the institution during the last complete award year for which figures are available; or

(ii) Establishes to the satisfaction of the Secretary, with the support of a financial statement submitted in accordance with paragraph (e) of this section, that the institution has sufficient resources to ensure against its precipitous closure, including the ability to meet all of its financial obligations (including refunds of institutional charges and repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary). The Secretary considers the institution to have sufficient resources to ensure against precipitous closure only if—

(A) The institution formerly demonstrated financial responsibility under the standards of financial responsibility in its preceding audited financial statement (or, if no prior audited financial statement was requested by the Secretary, demonstrates in conjunction with its current audit that it would have satisfied this requirement), and that its most recent audited financial statement indicates that—

(*1*) All taxes owed by the institution are current;

(*2*) The institution's net income, or a change in total net assets, before extraordinary items and discontinued operations, has not decreased by more than 10 percent from the prior fiscal year, unless the institution demonstrates that the decreased net income shown on the current financial statement is a result of downsizing pursuant to a management-approved business plan;

(*3*) Loans and other advances to related parties have not increased from the prior fiscal year unless such increases were secured and collateralized, and do not exceed 10 percent of the prior fiscal year's working capital of the institution;

(*4*) The equity of a for-profit institution, or the total net assets of a nonprofit institution, have not decreased by more than 10 percent of the prior year's total equity;

(*5*) Compensation for owners or other related parties (including bonuses, fringe benefits, employee stock option

allowances, 401k contributions, deferred compensation allowances) has not increased from the prior year at a rate higher than for all other employees;

(*6*) The institution has not materially leveraged its assets or income by becoming a guarantor on any new loan or obligation on behalf of any related party;

(*7*) All obligations owed to the institution by related parties are current, and that the institution has demanded and is receiving payment of all funds owed from related parties that are payable upon demand. For purposes of this section, a person does not become a related party by attending an institution as a student;

(B) There have been no material findings in the institution's latest compliance audit of its administration of the Title IV HEA programs; and

(C) There are no pending administrative or legal actions being taken against the institution by the Secretary, any other Federal agency, the institution's nationally recognized accrediting agency, or any State entity.

(3) An institution is not required to meet the acid test ratio in paragraph (b)(7)(i)(A) or (b)(8)(i)(B) of this section if the institution is an institution that provides a 2-year or 4-year educational program for which the institution awards an associate or baccalaureate degree that demonstrates to the satisfaction of the Secretary that—

(i) There is no reasonable doubt as to its continued solvency and ability to deliver quality educational services;

(ii) It is current in its payment of all current liabilities, including student refunds, repayments to the Secretary, payroll, and payment of trade creditors and withholding taxes; and

(iii) It has substantial equity in institution-occupied facilities, the acquisition of which was the direct cause of its failure to meet the acid test ratio requirement.

(4) The Secretary may determine an institution to be financially responsible even if the institution is not otherwise financially responsible under paragraph (c)(1) of this section if—

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person referenced in paragraph (c)(1) of this section exercises substantial control over the institution; and

(ii)(A) The person repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(*1*) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person's family, either alone or in combination with one another;

(*2*) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(*3*) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability;

(B) The applicable liability described in paragraph (c)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why—

(*1*) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(*2*) The person who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(e) [Reserved]

(f) *Definitions and terms.* For the purposes of this section—

(1)(i) An ''ownership interest'' is a share of the legal or beneficial ownership or control of, or a right to share in

the proceeds of the operation of, an institution, institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation.

(ii) The term ''ownership interest'' includes, but is not limited to—

(A) An interest as tenant in common, joint tenant, or tenant by the entireties;

(B) A partnership; and

(C) An interest in a trust.

(iii) The term ''ownership interest'' does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of—

(A) A mutual fund that is regularly and publicly traded;

(B) An institutional investor; or

(C) A profit-sharing plan, provided that all employees are covered by the plan;

(2) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer, if the person—

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(A) The institution or servicer; or

(B) An entity that holds at least a 25 percent ownership interest in the institution or servicer; and

(3) The Secretary considers a member of a person's family to be a parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse.

(g) *Two-year performance requirement.* (1) The Secretary considers an institution to have satisfied the requirements in paragraph (d)(1)(C) of this section if the independent certified public accountant, or government auditor who conducted the institution's compliance audits for the institution's two most recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years—

(i)(A) For either of those fiscal years, did not find in the sample of student records audited or reviewed that the institution made late refunds to 5 percent or more of the students in that sample. For purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the sample only those title IV, HEA program recipients who received or should have received a refund under § 668.22; or

(B) The Secretary considers the institution to have satisfied the conditions in paragraph (g)(1)(i)(A) of this section if the auditor or reviewer finds in the sample of student records audited or reviewed that the institution made only one late refund to a student in that sample; and

(ii) For either of those fiscal years, did not note a material weakness or a reportable condition in the institution's report on internal controls that is related to refunds.

(2) If the Secretary or a State or guaranty agency finds during a review conducted of the institution that the institution no longer qualifies for an exemption under paragraph (d)(1)(C) of this section, the institution must—

(i) Submit to the Secretary the irrevocable letter of credit required in paragraph (b)(5) of this section no later than 30 days after the Secretary or State or guaranty agency notifies the institution of that finding; and

(ii) Notify the Secretary of the guaranty agency or State that conducted the review.

(3) If the auditor who conducted the institution's compliance audit finds that the institution no longer qualifies for an exemption under paragraph (d)(1)(C) of this section, the institution must submit to the Secretary the irrevocable letter of credit required in paragraph (b)(5) of this section no later than 30 days after the date the institution's compliance audit must be submitted to the Secretary.

(h) *Foreign institutions.* The Secretary makes a determination of the financial

responsibility for a foreign institution on the basis of financial statements submitted under § 668.23(h).

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1094 and 1099c and Section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

[59 FR 22428, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 59 FR 61179, Nov. 29, 1994; 60 FR 34431, June 30, 1995; 60 FR 42408, Aug. 15, 1995; 61 FR 29901, June 12, 1996; 61 FR 60569, Nov. 29, 1996; 62 FR 27128, May 16, 1997; 71 FR 45694, Aug. 9, 2006; 75 FR 67198, Nov. 1, 2010]

§ 668.16 Standards of administrative capability.

To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering that program under each of the standards established in this section. The Secretary considers an institution to have that administrative capability if the institution—

(a) Administers the Title IV, HEA programs in accordance with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA;

(b)(1) Designates a capable individual to be responsible for administering all the Title IV, HEA programs in which it participates and for coordinating those programs with the institution's other Federal and non-Federal programs of student financial assistance. The Secretary considers an individual to be ''capable'' under this paragraph if the individual is certified by the State in which the institution is located, if the State requires certification of financial aid administrators. The Secretary may consider other factors in determining whether an individual is capable, including, but not limited to, the individual's successful completion of Title IV, HEA program training provided or approved by the Secretary, and previous experience and documented success in administering the Title IV, HEA programs properly;

(2) Uses an adequate number of qualified persons to administer the Title IV, HEA programs in which the institution participates. The Secretary considers the following factors to determine whether an institution uses an adequate number of qualified persons—

(i) The number and types of programs in which the institution participates;

(ii) The number of applications evaluated;

(iii) The number of students who receive any student financial assistance at the institution and the amount of funds administered;

(iv) The financial aid delivery system used by the institution;

(v) The degree of office automation used by the institution in the administration of the Title IV, HEA programs;

(vi) The number and distribution of financial aid staff; and

(vii) The use of third-party servicers to aid in the administration of the Title IV, HEA programs;

(3) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance; and

(4) Has written procedures for or written information indicating the responsibilities of the various offices with respect to the approval, disbursement, and delivery of Title IV, HEA program assistance and the preparation and submission of reports to the Secretary;

(c)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing or delivering funds so that no office has responsibility for both functions with respect to any particular student aided under the programs. For example, the functions of authorizing payments and disbursing or delivering funds must be divided so that for any particular student aided under the programs, the two functions are carried out by at least two organizationally independent individuals who are not members of the same family, as defined in § 668.15, or

who do not together exercise substantial control, as defined in § 668.15, over the institution;

(d)(1) Establishes and maintains records required under this part and the individual Title IV, HEA program regulations; and

(2)(i) Reports annually to the Secretary on any reasonable reimbursements paid or provided by a private education lender or group of lenders as described under section 140(d) of the Truth in Lending Act (15 U.S.C. 1631(d)) to any employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, including responsibilities involving the selection of lenders, or other financial aid of the institution, including—

(A) The amount for each specific instance of reasonable expenses paid or provided;

(B) The name of the financial aid official, other employee, or agent to whom the expenses were paid or provided;

(C) The dates of the activity for which the expenses were paid or provided; and

(D) A brief description of the activity for which the expenses were paid or provided.

(ii) Expenses are considered to be reasonable if the expenses—

(A) Meet the standards of and are paid in accordance with a State government reimbursement policy applicable to the entity; or

(B) Meet the standards of and are paid in accordance with the applicable Federal cost principles for reimbursement, if no State policy that is applicable to the entity exists.

(iii) The policy must be consistently applied to an institution's employees reimbursed under this paragraph;

(e) For purposes of determining student eligibility for assistance under a title IV, HEA program, establishes, publishes, and applies reasonable standards for measuring whether an otherwise eligible student is maintaining satisfactory academic progress in his or her educational program. The Secretary considers an institution's standards to be reasonable if the standards are in accordance with the provisions specified in § 668.34.

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information that the institution receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purpose, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, documentation of the student's social security number, or other factors relating to the student's eligibility for funds under the Title IV, HEA programs;

(g) Refers to the Office of Inspector General of the Department of Education for investigation—

(1) After conducting the review of an application provided for under paragraph (f) of this section, any credible information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are—

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income; and

(2) Any credible information indicating that any employee, third-party

servicer, or other agent of the institution that acts in a capacity that involves the administration of the Title IV, HEA programs, or the receipt of funds under those programs, may have engaged in fraud, misrepresentation, conversion or breach of fiduciary responsibility, or other illegal conduct involving the Title IV, HEA programs. The type of information that an institution must refer is that which is relevant to the eligibility and funding of the institution and its students through the Title IV, HEA programs;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed, delivered, or applied to a student's account; and

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

(i) Has provided all program and fiscal reports and financial statements required for compliance with the provisions of this part and the individual program regulations in a timely manner;

(j) Shows no evidence of significant problems that affect, as determined by the Secretary, the institution's ability to administer a Title IV, HEA program and that are identified in—

(1) Reviews of the institution conducted by the Secretary, the Department of Education's Office of Inspector General, nationally recognized accrediting agencies, guaranty agencies as defined in 34 CFR part 682, the State agency or official by whose authority the institution is legally authorized to provide postsecondary education, or any other law enforcement agency; or

(2) Any findings made in any criminal, civil, or administrative proceeding;

(k) Is not, and does not have any principal or affiliate of the institution (as those terms are defined in 2 CFR parts 180 and 3485) that is—

(1) Debarred or suspended under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(2) Engaging in any activity that is a cause under 2 CFR 180.700 or 180.800, as adopted at 2 CFR 3485.12, for debarment or suspension under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4;

(l) For an institution that seeks initial participation in a Title IV, HEA program, does not have more than 33 percent of its undergraduate regular students withdraw from the institution during the institution's latest completed award year. The institution must count all regular students who are enrolled during the latest completed award year, except those students who, during that period—

(1) Withdrew from, dropped out of, or were expelled from the institution;

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

(m)(1) Has a cohort default rate—

(i) That is less than 25 percent for each of the three most recent fiscal years during which rates have been issued, to the extent those rates are calculated under subpart M of this part;

(ii) On or after 2014, that is less than 30 percent for at least two of the three most recent fiscal years during which the Secretary has issued rates for the institution under subpart N of this part; and

(iii) As defined in 34 CFR 674.5, on loans made under the Federal Perkins Loan Program to students for attendance at that institution that does not exceed 15 percent.

(2)(i) However, if the Secretary determines that an institution's administrative capability is impaired solely because the institution fails to comply with paragraph (m)(1) of this section, and the institution is not subject to a loss of eligibility under §§ 668.187(a) or

668.206(a), the Secretary allows the institution to continue to participate in the Title IV, HEA programs. In such a case, the Secretary may provisionally certify the institution in accordance with § 668.13(c) except as provided in paragraphs (m)(2)(ii), (m)(2)(iii), (m)(2)(iv), and (m)(2)(v) of this section.

(ii) An institution that fails to meet the standard of administrative capability under paragraph (m)(1)(ii) based on two cohort default rates that are greater than or equal to 30 percent but less than or equal to 40 percent is not placed on provisional certification under paragraph (m)(2)(i) of this section—

(A) If it has timely filed a request for adjustment or appeal under §§ 668.209, 668.210, or 668.212 with respect to the second such rate, and the request for adjustment or appeal is either pending or succeeds in reducing the rate below 30 percent; or

(B) If it has timely filed an appeal under § 668.213 after receiving the second such rate, and the appeal is either pending or successful; or

(C)(*1*) If it has timely filed a participation rate index challenge or appeal under § 668.204(c) or § 668.214 from either or both of the two rates, and the challenge or appeal is either pending or successful; or

(*2*) If the second rate is the most recent draft rate, and the institution has timely filed a participation rate challenge to that draft rate that is either pending or successful.

(iii) The institution may appeal the loss of full participation in a Title IV, HEA program under paragraph (m)(2)(i) of this section by submitting an erroneous data appeal in writing to the Secretary in accordance with and on the grounds specified in §§ 668.192 or 668.211 as applicable;

(iv) If the institution has 30 or fewer borrowers in the three most recent cohorts of borrowers used to calculate its cohort default rate under subpart N of this part, we will not provisionally certify it solely based on cohort default rates;

(v) If a rate that would otherwise potentially subject the institution to provisional certification under paragraphs (m)(1)(ii) and (m)(2)(i) of this section is calculated as an average rate, we will not provisionally certify it solely based on cohort default rates;

(n) Does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently;

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

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

(2) Identifies through a notice published in the FEDERAL REGISTER; and

(p) Develops and follows procedures to evaluate the validity of a student's high school completion if the institution or the Secretary has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

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

(Authority: 20 U.S.C. 1082, 1085, 1092, 1094, and 1099c)

[59 FR 22431, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 59 FR 61180, Nov. 29, 1994; 60 FR 34431, June 30, 1995; 60 FR 42408, Aug. 15, 1995; 61 FR 60603, Nov. 29, 1996; 62 FR 27128, May 16, 1997; 63 FR 40624, July 29, 1998; 64 FR 59038, Nov. 1, 1999; 65 FR 65637, Nov. 1, 2000; 74 FR 55648, Oct. 28, 2009; 75 FR 66951, Oct. 29, 2010; 76 FR 52272, Aug. 22, 2011; 77 FR 18679, Mar. 28, 2012; 80 FR 67235, Oct. 30, 2015]

§ 668.17 [Reserved]

§ 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; and

(E)(*1*) If the student is readmitted to the same program, for the first academic year in which the student returns, assessing—

(*i*) The tuition and fee charges that the student was or would have been assessed for the academic year during which the student left the institution; or

(*ii*) Up to the amount of tuition and fee charges that other students in the program are assessed for that academic year, if veterans' education benefits, as defined in section 480(c) of the HEA, or other servicemember education benefits, will pay the amount in excess of the tuition and fee charges assessed for the academic year in 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 tuition and fee charges that other students in the program are assessed for that academic year.

(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 at no extra cost to the student 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 to the student and allowing the student to retake a pretest at no extra cost to the student.

(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 when considered in light of the overall financial resources of the institution and the impact otherwise of such action on the operation of the institution.

(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 for the period of enrollment during which the student resumes attendance, and continuing so long as the institution is unable to comply with such requirements through other means.

(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, not later than 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.*)

[74 FR 55934, Oct. 29, 2009]

§ 668.19 Financial aid history.

(a) Before an institution may disburse title IV, HEA program funds to a student who previously attended another eligible institution, the institution must use information it obtains from the Secretary, through the National Student Loan Data System (NSLDS) or its successor system, to determine—

(1) Whether the student is in default on any title IV, HEA program loan;

(2) Whether the student owes an overpayment on any title IV, HEA program grant or Federal Perkins Loan;

(3) For the award year for which a Federal Pell Grant, an ACG, a National SMART Grant, or a TEACH Grant is requested, the student's Scheduled Federal Pell Grant, ACG, National SMART Grant, or a TEACH Grant Award and the amount of Federal Pell Grant, ACG, National SMART Grant, or a TEACH Grant funds disbursed to the student;

(4) The outstanding principal balance of loans made to the student under each of the title IV, HEA loan programs; and

(5) For the academic year for which title IV, HEA aid is requested, the amount of, and period of enrollment for, loans made to the student under each of the title IV, HEA loan programs.

(b)(1) If a student transfers from one institution to another institution during the same award year, the institution to which the student transfers must request from the Secretary, through NSLDS, updated information about that student so it can make the determinations required under paragraph (a) of this section; and

(2) The institution may not make a disbursement to that student for seven days following its request, unless it receives the information from NSLDS in response to its request or obtains that information directly by accessing

NSLDS, and the information it receives allows it to make that disbursement.

(Approved by the Office of Management and Budget under control number 1845–0537)

(Authority: 20 U.S.C. 1070g, 1091, 1094)

[65 FR 65675, Nov. 1, 2000, as amended at 71 FR 38002, July 3, 2006; 73 FR 35492, June 23, 2008]

§ 668.20 Limitations on remedial coursework that is eligible for Title IV, HEA program assistance.

(a) A noncredit or reduced credit remedial course is a course of study designed to increase the ability of a student to pursue a course of study leading to a certificate or degree.

(1) A noncredit remedial course is one for which no credit is given toward a certificate or degree; and

(2) A reduced credit remedial course is one for which reduced credit is given toward a certificate or degree.

(b) Except as provided in paragraphs (c) and (d) of this section, in determining a student's enrollment status and cost of attendance, an institution shall include any noncredit or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a noncredit or reduced credit remedial course by—

(1) Calculating the number of classroom and homework hours required for that course;

(2) Comparing those hours with the hours required for nonremedial courses in a similar subject; and

(3) Giving the remedial course the same number of credit or clock hours it gives the nonremedial course with the most comparable classroom and homework requirements.

(c) In determining a student's enrollment status under the Title IV, HEA programs or a student's cost of attendance under the campus-based, FFEL, and Direct Loan programs, an institution may not take into account any noncredit or reduced credit remedial course if—

(1) That course is part of a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete a degree or certificate program;

(2) The educational level of instruction provided in the noncredit or reduced credit remedial course is below the level needed to pursue successfully the degree or certificate program offered by that institution after one year in that remedial course; or

(3) Except for a course in English as a second language, the educational level of instruction provided in that course is below the secondary level. For purposes of this section, the Secretary considers a course to be below the secondary level if any of the following entities determine that course to be below the secondary level:

(i) The State agency that legally authorized the institution to provide postsecondary education.

(ii) In the case of an accredited or preaccredited institution, the nationally recognized accrediting agency or association that accredits or preaccredits the institution.

(iii) In the case of a public postsecondary vocational institution that is approved by a State agency recognized for the approval of public postsecondary vocational education, the State agency recognized for the approval of public postsecondary vocational education that approves the institution.

(iv) The institution.

(d) Except as set forth in paragraph (f) of this section, an institution may not take into account more than one academic year's worth of noncredit or reduced credit remedial coursework in determining—

(1) A student's enrollment status under the title IV, HEA programs; and

(2) A student's cost of attendance under the campus-based, FFEL, and Direct Loan programs.

(e) One academic year's worth of noncredit or reduced credit remedial coursework is equivalent to—

(1) Thirty semester or 45 quarter hours; or

(2) Nine hundred clock hours.

(f) Courses in English as a second language do not count against the one-

year academic limitation contained in paragraph (d) of this section.

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

[52 FR 45724, Dec. 1, 1987, as amended at 56 FR 36698, July 31, 1991; 58 FR 32202, June 8, 1993; 63 FR 40624, July 29, 1998]

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

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

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

(2) For FFEL and Direct Loan funds—

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

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

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

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

(b) The institution must return those funds for which it is responsible under paragraph (a) of this section to the respective title IV, HEA program as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance.

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

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

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

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

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

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

(i) The institution's records show that the check was issued more than 30

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

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

(Authority: 20 U.S.C. 1070g, 1094)

[72 FR 62027, Nov. 1, 2007, as amended at 73 FR 35493, June 23, 2008]

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

(a) *General.* (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.

(2)(i) Except as provided in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, a student is considered to have withdrawn from a payment period or period of enrollment if—

(A) In the case of a program that is measured in credit hours, the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete;

(B) In the case of a program that is measured in clock hours, the student does not complete all of the clock hours and weeks of instructional time in the payment period or period of enrollment that the student was scheduled to complete; or

(C) For a student in a nonterm or nonstandard-term program, the student is not scheduled to begin another course within a payment period or period of enrollment for more than 45 calendar days after the end of the module the student ceased attending, unless the student is on an approved leave of absence, as defined in paragraph (d) of this section.

(ii)(A) Notwithstanding paragraph (a)(2)(i)(A) and (a)(2)(i)(B) of this section, for a payment period or period of enrollment in which courses in the program are offered in modules—

(*1*) A student is not considered to have withdrawn if the institution obtains written confirmation from the student at the time that would have been a withdrawal of the date that he or she will attend a module that begins later in the same payment period or period of enrollment; and

(*2*) For nonterm and nonstandard-term programs, that module begins no later than 45 calendar days after the end of the module the student ceased attending.

(B) If an institution has obtained the written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) of this section—

(*1*) A student may change the date of return to a module that begins later in the same payment period or period of enrollment, provided that the student does so in writing prior to the return date that he or she had previously confirmed; and

(*2*) For nonterm and nonstandard-term programs, the later module that he or she will attend begins no later than 45 calendar days after the end of module the student ceased attending.

(C) If an institution obtains written confirmation of future attendance in accordance with paragraph (a)(2)(ii)(A) and, if applicable, (a)(2)(ii)(B) of this section, but the student does not return as scheduled—

(*1*) The student is considered to have withdrawn from the payment period or period of enrollment; and

(*2*) The student's withdrawal date and the total number of calendar days in the payment period or period of enrollment would be the withdrawal date and total number of calendar days that would have applied if the student had not provided written confirmation of a future date of attendance in accordance with paragraph (a)(2)(ii)(A) of this section.

(iii)(A) If a student withdraws from a term-based credit-hour program offered in modules during a payment period or period of enrollment and reenters the same program prior to the end of the period, subject to conditions established by the Secretary, the student is eligible to receive any title IV, HEA program funds for which he or she was

eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section, provided the student's enrollment status continues to support the full amount of those funds.

(B) In accordance with § 668.4(f), if a student withdraws from a clock-hour or nonterm credit hour program during a payment period or period of enrollment and then reenters the same program within 180 calendar days, the student remains in that same period when he or she returns and, subject to conditions established by the Secretary, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of this section.

(3) For purposes of this section, ''title IV grant or loan assistance'' includes only assistance from the Federal Perkins Loan, Direct Loan, FFEL, Federal Pell Grant, Academic Competitiveness Grant, National SMART Grant, TEACH Grant, and FSEOG programs, not including the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.

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

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

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

(5) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is greater than the total amount of title IV grant or loan assistance, or both, that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference between these amounts must be treated as a post-withdrawal disbursement in accordance with paragraph (a)(6) of this section and § 668.164(g).

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

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

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

(*2*) Loan funds that make up the post-withdrawal disbursement in accordance with § 668.164(d)(1), (d)(2), and (d)(3) only after obtaining confirmation from the student or parent in the case of a parent PLUS loan, that they still wish to have the loan funds disbursed in accordance with paragraph (a)(6)(iii) of this section.

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

(*2*) The institution must offer to disburse directly to a student, or parent in the case of a parent PLUS loan, any amount of a post-withdrawal disbursement of loan funds that is not credited to the student's account, in accordance with paragraph (a)(6)(iii) of this section.

(*3*) The institution must make a direct disbursement of any loan funds that make up the post-withdrawal disbursement only after obtaining the student's, or parent's in the case of a parent PLUS loan, confirmation that the student or parent still wishes to have the loan funds disbursed in accordance with paragraph (a)(6)(iii) of this section.

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

(*1*) Requests confirmation of any post-withdrawal disbursement of loan funds that the institution wishes to credit to the student's account in accordance with paragraph (a)(6)(ii)(A)(*2*) of this section, identifying the type and amount of those loan funds and explaining that a student, or parent in the case of a parent PLUS loan, may accept or decline some or all of those funds;

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

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

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

(*5*) Advises the student, or parent in the case of a parent PLUS loan, that no post-withdrawal disbursement of loan funds will be made, unless the institution chooses to make a post-withdrawal disbursement based on a late response in accordance with paragraph (a)(6)(iii)(C) of this section, if the student or parent in the case of a parent PLUS loan, does not respond within 14 days of the date that the institution sent the notification, or a later deadline set by the institution.

(B) The deadline for a student, or parent in the case of a parent PLUS loan, to accept a post-withdrawal disbursement under paragraph (a)(6)(iii)(A) of this section must be the same for both a confirmation of a direct disbursement of the post-withdrawal disbursement of loan funds and a confirmation of a post-withdrawal disbursement of loan funds to be credited to the student's account.

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

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

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

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

(iv) An institution must document in the student's file the result of any notification made in accordance with paragraph (a)(6)(iii) of this section of the student's right to cancel all or a

portion of loan funds or of the student's right to accept or decline loan funds, and the final determination made concerning the disbursement.

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

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

(3)(i) An institution is required to take attendance if—

(A) An outside entity (such as the institution's accrediting agency or a State agency) has a requirement that the institution take attendance;

(B) The institution itself has a requirement that its instructors take attendance; or

(C) The institution or an outside entity has a requirement that can only be met by taking attendance or a comparable process, including, but not limited to, requiring that students in a program demonstrate attendance in the classes of that program, or a portion of that program.

(ii) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance or requires that attendance be taken for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.

(iii)(A) If, in accordance with paragraph (b)(3)(i) of this section, an institution is required to take attendance, or requires that attendance be taken, for a limited period, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(3)(i) of this section for that limited period.

(B) A student in attendance the last time attendance is required to be taken during the limited period identified in paragraph (b)(3)(iii)(A) of this section who subsequently stops attending during the payment period will be treated as a student for whom the institution was not required to take attendance.

(iv) If an institution is required to take attendance or requires that attendance be taken, on only one specified day to meet a census reporting requirement, the institution is not considered to take attendance.

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

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

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

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

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

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

the student began the leave of absence; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;

(vii) Except for a clock hour or nonterm credit hour program, upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

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

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

(3) For purposes of this paragraph—

(i) The number of days in a leave of absence is counted beginning with the

first day of the student's initial leave of absence in a 12-month period.

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

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

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

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

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

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

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

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

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

(A) Completion of 60 percent of the payment period or period of enrollment for a program that is measured in credit hours; or

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

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

(A) Completion of 60 percent of the payment period or period of enrollment for a program that is measured in credit hours; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii)(A) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours scheduled to be completed as of the student's withdrawal date.

(B) The scheduled clock hours used must be those established by the institution prior to the student's beginning class date for the payment period or period of enrollment and must be consistent with the published materials describing the institution's programs, unless the schedule was modified prior to the student's withdrawal.

(C) The schedule must have been established in accordance with requirements of the accrediting agency and the State licensing agency, if such standards exist.

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

(ii) The total number of calendar days in a payment period or period of enrollment does not include—

(A) Days in which the student was on an approved leave of absence; or

(B) For a payment period or period of enrollment in which any courses in the program are offered in modules, any scheduled breaks of at least five consecutive days when the student is not scheduled to attend a module or other course offered during that period of time.

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

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

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

(2) For purposes of this section, ''institutional charges'' are tuition, fees,

room and board (if the student contracts with the institution for the room and board) and other educationally-related expenses assessed by the institution.

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

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

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

(h) *Return of unearned aid, responsibility of the student.* (1) After the institution has allocated the unearned funds for which it is responsible in accordance with paragraph (g) of this section, the student must return assistance for which the student is responsible in the order specified in paragraph (i) of this section.

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

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

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

(ii) Any title IV grant program as an overpayment of the grant; however, a student is not required to return the following—

(A) The portion of a grant overpayment amount that is equal to or less than 50 percent of the total grant assistance that was disbursed (and that could have been disbursed, as defined in paragraph (l)(1) of this section) to the student for the payment period or period of enrollment.

(B) With respect to any grant program, a grant overpayment amount, as determined after application of paragraph (h)(3)(ii)(A) of this section, of 50 dollars or less that is not a remaining balance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The Secretary may waive grant overpayment amounts that students are required to return under this section if the withdrawals on which the returns are based are withdrawals by students—

(i) Who were residing in, employed in, or attending an institution of higher education that is located in an area in which the President has declared that a major disaster exists, in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170);

(ii) Whose attendance was interrupted because of the impact of the disaster on the student or institution; and

(iii) Whose withdrawal occurred within the award year during which the designation occurred or during the next succeeding award year.

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

(i) Unsubsidized Federal Stafford loans.

(ii) Subsidized Federal Stafford loans.

(iii) Unsubsidized Federal Direct Stafford loans.

(iv) Subsidized Federal Direct Stafford loans.

(v) Federal Perkins loans.

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

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

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

(i) Federal Pell Grants.

(ii) Academic Competitiveness Grants.

(iii) National SMART Grants.

(iv) FSEOG Program aid.

(v) TEACH Grants.

(j) *Timeframe for the return of title IV funds.* (1) An institution must return the amount of title IV funds for which it is responsible under paragraph (g) of this section as soon as possible but no later than 45 days after the date of the institution's determination that the student withdrew as defined in paragraph (l)(3) of this section. The timeframe for returning funds is further described in § 668.173(b).

(2) For an institution that is not required to take attendance, an institution must determine the withdrawal date for a student who withdraws without providing notification to the institution no later than 30 days after the end of the earlier of the—

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

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

(iii) Educational program from which the student withdrew.

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

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

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

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

(3) The ''date of the institution's determination that the student withdrew''for an institution that is not required to take attendance is—

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

(ii) For a student who did not provide notification of his of her withdrawal to the institution, the date that the institution becomes aware that the student ceased attendance;

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

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

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

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

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

(6) A program is ''offered in modules'' if a course or courses in the program do not span the entire length of the payment period or period of enrollment.

(7)(i) ''Academic attendance'' and ''attendance at an academically-related activity''—

(A) Include, but are not limited to—

(*1*) Physically attending a class where there is an opportunity for direct interaction between the instructor and students;

(*2*) Submitting an academic assignment;

(*3*) Taking an exam, an interactive tutorial, or computer-assisted instruction;

(*4*) Attending a study group that is assigned by the institution;

(*5*) Participating in an online discussion about academic matters; and

(*6*) Initiating contact with a faculty member to ask a question about the academic subject studied in the course; and

(B) Do not include activities where a student may be present, but not academically engaged, such as—

(*1*) Living in institutional housing;

(*2*) Participating in the institution's meal plan;

(*3*) Logging into an online class without active participation; or

(*4*) Participating in academic counseling or advisement.

(ii) A determination of ''academic attendance'' or ''attendance at an academically-related activity'' must be made by the institution; a student's certification of attendance that is not supported by institutional documentation is not acceptable.

(8) A program is a nonstandard-term program if the program is a term-based program that does not qualify under 34 CFR 690.63(a)(1) or (a)(2) to calculate

Federal Pell Grant payments under 34 CFR 690.63(b) or (c).

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

(Authority: 20 U.S.C. 1070g, 1091b)

[64 FR 59038, Nov. 1, 1999, as amended at 67 FR 67073, Nov. 1, 2002; 71 FR 45694, Aug. 9, 2006; 71 FR 64397, Nov. 1, 2006; 72 FR 62027, Nov. 1, 2007; 73 FR 35493, June 23, 2008; 75 FR 66951, Oct. 29, 2010]

§ 668.23 Compliance audits and audited financial statements.

(a) *General*—(1) *Independent auditor*. For purposes of this section, the term ''independent auditor'' refers to an independent certified public accountant or a government auditor. To conduct an audit under this section, a government auditor must meet the Government Auditing Standards qualification and independence standards, including standards related to organizational independence.

(2) *Institutions*. An institution that participates in any title IV, HEA program must at least annually have an independent auditor conduct a compliance audit of its administration of that program and an audit of the institution's general purpose financial statements.

(3) *Third-party servicers*. Except as provided under this part or 34 CFR part 682, with regard to complying with the provisions under this section a third-party servicer must follow the procedures contained in the audit guides developed by and available from the Department of Education's Office of Inspector General. A third-party servicer is defined under § 668.2 and 34 CFR 682.200.

(4) *Submission deadline*. Except as provided by the Single Audit Act, Chapter 75 of title 31, United States Code, an institution must submit annually to the Secretary its compliance audit and its audited financial statements no later than six months after the last day of the institution's fiscal year.

(5) *Audit submission requirements*. In general, the Secretary considers the compliance audit and audited financial statement submission requirements of this section to be satisfied by an audit conducted in accordance with the Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, or the audit guides developed by and available from the Department of Education's Inspector General, whichever is applicable to the entity, and provided that the Federal student aid functions performed by that entity are covered in the submission. (Both OMB circulars are available by calling OMB's Publication Office at (202) 395–7332, or they can be obtained in electronic form on the OMB Home Page (*http://www.whitehouse.gov*).

(b) *Compliance audits for institutions*. (1) An institution's compliance audit must cover, on a fiscal year basis, all title IV, HEA program transactions, and must cover all of those transactions that have occurred since the period covered by the institution's last compliance audit.

(2) The compliance audit required under this section must be conducted in accordance with—

(i) The general standards and the standards for compliance audits contained in the U.S. General Accounting Office's (GAO's) Government Auditing Standards. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402); and

(ii) Procedures for audits contained in audit guides developed by, and available from, the Department of Education's Office of Inspector General.

(3) The Secretary may require an institution to provide a copy of its compliance audit report to guaranty agencies or eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, or nationally recognized accrediting agencies.

(c) *Compliance audits for third-party servicers*. (1) A third-party servicer that administers title IV, HEA programs for institutions does not have to have a compliance audit performed if—

(i) The servicer contracts with only one institution; and

(ii) The audit of that institution's administration of the title IV, HEA programs involves every aspect of the servicer's administration of that program for that institution.

(2) A third-party servicer that contracts with more than one participating institution may submit a compliance audit report that covers the

servicer's administration of the title IV, HEA programs for all institutions with which the servicer contracts.

(3) A third-party servicer must submit annually to the Secretary its compliance audit no later than six months after the last day of the servicer's fiscal year.

(4) The Secretary may require a third-party servicer to provide a copy of its compliance audit report to guaranty agencies or eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, or nationally recognized accrediting agencies.

(d) *Audited financial statements*—(1) *General*. To enable the Secretary to make a determination of financial responsibility, an institution must, to the extent requested by the Secretary, submit to the Secretary a set of financial statements for its latest complete fiscal year, as well as any other documentation the Secretary deems necessary to make that determination. Financial statements submitted to the Secretary must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States and other guidance contained in the Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations; or in audit guides developed by, and available from, the Department of Education's Office of Inspector General , whichever is applicable. As part of these financial statements, the institution must include a detailed description of related entities based on the definition of a related entity as set forth in the Statement of Financial Accounting Standards (SFAS) 57. The disclosure requirements under this provision extend beyond those of SFAS 57 to include all related parties and a level of detail that would enable to Secretary to readily identify the related party. Such information may include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

(2) *Submission of additional financial statements*. To the extent requested by the Secretary in determining whether an institution is financially responsible, the Secretary may also require the submission of audited consolidated financial statements, audited full consolidating financial statements, audited combined financial statements or the audited financial statements of one or more related parties that have the ability, either individually or collectively, to significantly influence or control the institution, as determined by the Secretary.

(3) *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 dollar amount of the numerator and denominator of its 90/10 ratio as well as the individual revenue amounts identified in section 2 of appendix C to subpart B of part 668.

(4) *Audited financial statements for third-party servicers*. A third-party servicer that enters into a contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's programs, as provided under 34 CFR part 682, must submit annually an audited financial statement. This financial statement must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards and other guidance contained in audit guides issued by the Department of Education's Office of Inspector General.

(e) *Access to records*. (1) An institution or a third-party servicer that has a compliance or financial statement audit conducted under this section must—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review that

audit, including the right to obtain copies of those records or documents; and

(ii) Require an individual or firm conducting the audit to give the Secretary and the Inspector General access to records, audit work papers, or other documents necessary to review that audit, including the right to obtain copies of those records, work papers, or documents.

(2) An institution must give the Secretary and the Inspector General access to records or other documents necessary to review a third-party servicer's compliance or financial statement audit, including the right to obtain copies of those records or documents.

(f) *Determination of liabilities.* (1) Based on the audit finding and the institution's or third-party servicer's response, the Secretary determines the amount of liability, if any, owed by the institution or servicer and instructs the institution or servicer as to the manner of repayment.

(2) If the Secretary determines that a third-party servicer owes a liability for its administration of an institution's title IV, HEA programs, the servicer must notify each institution under whose contract the servicer owes a liability of that determination. The servicer must also notify every institution that contracts with the servicer for the same service that the Secretary determined that a liability was owed.

(g) *Repayments.* (1) An institution or third-party servicer that must repay funds under the procedures in this section shall repay those funds at the direction of the Secretary within 45 days of the date of the Secretary's notification, unless—

(i) The institution or servicer files an appeal under the procedures established in subpart H of this part; or

(ii) The Secretary permits a longer repayment period.

(2) Notwithstanding paragraphs (f) and (g)(1) of this section—

(i) If an institution or third-party servicer has posted surety or has provided a third-party guarantee and the Secretary questions expenditures or compliance with applicable requirements and identifies liabilities, then the Secretary may determine that deferring recourse to the surety or guarantee is not appropriate because—

(A) The need to provide relief to students or borrowers affected by the act or omission giving rise to the liability outweighs the importance of deferring collection action until completion of available appeal proceedings; or

(B) The terms of the surety or guarantee do not provide complete assurance that recourse to that protection will be fully available through the completion of available appeal proceedings; or

(ii) The Secretary may use administrative offset pursuant to 34 CFR part 30 to collect the funds owed under the procedures of this section.

(3) If, under the proceedings in subpart H, liabilities asserted in the Secretary's notification, under paragraph (e)(1) of this section, to the institution or third-party servicer are upheld, the institution or third-party servicer must repay those funds at the direction of the Secretary within 30 days of the final decision under subpart H of this part unless—

(i) The Secretary permits a longer repayment period; or

(ii) The Secretary determines that earlier collection action is appropriate pursuant to paragraph (g)(2) of this section.

(4) An institution is held responsible for any liability owed by the institution's third-party servicer for a violation incurred in servicing any aspect of that institution's participation in the title IV, HEA programs and remains responsible for that amount until that amount is repaid in full.

(h) *Audit submission requirements for foreign institutions.* (1) *Audited financial statements.* (i) The Secretary waives for that fiscal year the submission of audited financial statements if the institution is a foreign public or nonprofit institution that received less than $500,000 in U.S. title IV program funds during its most recently completed fiscal year, unless that foreign public or nonprofit institution is in its initial provisional period of participation, and received title IV program funds during that fiscal year, in which case the institution must submit, in English, audited financial statements prepared in

accordance with generally accepted accounting principles of the institution's home country.

(ii) Except as provided in paragraph (h)(1)(iii) of this section, a foreign institution that received $500,000 or more in U.S. title IV program funds during its most recently completed fiscal year must submit, in English, for each most recently completed fiscal year in which it received title IV program funds, audited financial statements prepared in accordance with generally accepted accounting principles of the institution's home country along with corresponding audited financial statements that meet the requirements of paragraph (d) of this section.

(iii) In lieu of making the submission required by paragraph (h)(1)(ii) of this section, a public or private nonprofit institution that received—

(A) $500,000 or more in U.S. title IV program funds, but less than $3,000,000 in U.S. title IV program funds during its most recently completed fiscal year, may submit for that year, in English, audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country, and is not required to submit the corresponding audited financial statements that meet the requirements of paragraph (d) of this section;

(B) At least $3,000,000, but less than $10,000,000 in U.S. title IV, program funds during its most recently completed fiscal year, must submit in English, for each most recently completed fiscal year, audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country along with corresponding audited financial statements that meet the requirements of paragraph (d) of this section, except that an institution that continues to receive at least $3,000,000 but less than $10,000,000, in U.S. title IV funds during its most recently completed fiscal year may omit the audited financial statements that meet the requirements of paragraph (d) of this section for up to two consecutive years following the submission of audited financial statements that meet the requirements of paragraph (d) of this section.

(2) *Compliance audits.* A foreign institution's compliance audit must cover, on a fiscal year basis, all title IV, HEA program transactions, and must cover all of those transactions that have occurred since the period covered by the institution's last compliance audit. A compliance audit that is due under this paragraph must be submitted no later than six months after the last day of the institution's fiscal year, and must meet the following requirements:

(i) If the foreign institution received $500,000 or more in U.S. dollars in title IV, HEA program funds during its most recently completed fiscal year, it must submit a standard compliance audit for that prior fiscal year that is performed in accordance with audit guides developed by, and available from, the Department of Education's Office of Inspector General, together with an alternative compliance audit or audits prepared in accordance with paragraph (h)(2)(ii) of this section for any preceding fiscal year or years in which the foreign institution received less than $500,000 in U.S. dollars in title IV, HEA program funds and for which a compliance audit has not already been submitted;

(ii) If the foreign institution received less than $500,000 U.S. in title IV, HEA program funds for its most recently completed fiscal year, it must submit an alternative compliance audit for that prior fiscal year that is performed in accordance with audit guides developed by, and available from, the Department of Education's Office of Inspector General, except as noted in paragraph (h)(2)(iii) of this section.

(iii) If so notified by the Secretary, a foreign institution may submit an alternative compliance audit performed in accordance with audit guides developed by, and available from, the Department of Education's Office of Inspector General, that covers a period not to exceed three of the institution's consecutive fiscal years if such audit is submitted either no later than six months after the last day of the most recent fiscal year, or contemporaneously with a standard compliance audit timely submitted under paragraph (h)(2)(i) or (h)(3)(ii) of this section for the most recently completed

fiscal year, and if the following conditions are met:

(A) The institution received less than $500,000 in title IV, HEA program funds for its most recently completed fiscal year.

(B) The institution has timely submitted acceptable compliance audits for two consecutive fiscal years, and following such submission, has no history of late submission since then.

(C) The institution is fully certified.

(3)(i) *Exceptions.* Notwithstanding the provisions of paragraphs (h)(1)(i) and (h)(1)(iii) of this section, the Secretary may issue a letter to a foreign institution that identifies problems with its financial condition or financial reporting and requires the submission of audited financial statements in the manner specified by the Secretary.

(ii) Notwithstanding the provisions of paragraphs (h)(2)(ii) and (h)(2)(iii) of this section, the Secretary may issue to a foreign institution a letter that identifies problems with its administrative capability or compliance reporting that may require the compliance audit to be performed at a higher level of engagement, and may require the compliance audit to be submitted annually.

(Approved by the Office of Management and Budget under control number 1840–0697)

(Authority: 20 U.S.C. 1088, 1094, 1099c, 1141, and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

[61 FR 60569, Nov. 29, 1996, as amended at 62 FR 27128, May 16, 1997; 62 FR 62876, Nov. 25, 1997; 74 FR 55936, Oct. 29, 2009; 75 FR 67198, Nov. 1, 2010]

§ 668.24 Record retention and examinations.

(a) *Program records.* An institution shall establish and maintain, on a current basis, any application for title IV, HEA program funds and program records that document—

(1) Its eligibility to participate in the title IV, HEA programs;

(2) The eligibility of its educational programs for title IV, HEA program funds;

(3) Its administration of the title IV, HEA programs in accordance with all applicable requirements;

(4) Its financial responsibility, as specified in this part;

(5) Information included in any application for title IV, HEA program funds; and

(6) Its disbursement and delivery of title IV, HEA program funds.

(b) *Fiscal records.* (1) An institution shall account for the receipt and expenditure of title IV, HEA program funds in accordance with generally accepted accounting principles.

(2) An institution shall establish and maintain on a current basis—

(i) Financial records that reflect each HEA, title IV program transaction; and

(ii) General ledger control accounts and related subsidiary accounts that identify each title IV, HEA program transaction and separate those transactions from all other institutional financial activity.

(c) *Required records.* (1) The records that an institution must maintain in order to comply with the provisions of this section include but are not limited to—

(i) The Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds;

(ii) Application data submitted to the Secretary, lender, or guaranty agency by the institution on behalf of the student or parent;

(iii) Documentation of each student's or parent borrower's eligibility for title IV, HEA program funds;

(iv) Documentation relating to each student's or parent borrower's receipt of title IV, HEA program funds, including but not limited to documentation of—

(A) The amount of the grant, loan, or FWS award; its payment period; its loan period, if appropriate; and the calculations used to determine the amount of the grant, loan, or FWS award;

(B) The date and amount of each disbursement or delivery of grant or loan funds, and the date and amount of each payment of FWS wages;

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

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

(v) Documentation of and information collected at any initial or exit loan counseling required by applicable program regulations;

(vi) Reports and forms used by the institution in its participation in a title IV, HEA program, and any records needed to verify data that appear in those reports and forms; and

(vii) Documentation supporting the institution's calculations of its completion or graduation rates under §§ 668.46 and 668.49.

(2) In addition to the records required under this part—

(i) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for documentation of repayment history for that program;

(ii) Participants in the FWS Program shall follow procedures established in 34 CFR 675.19 for documentation of work, earnings, and payroll transactions for that program; and

(iii) Participants in the FFEL Program shall follow procedures established in 34 CFR 682.610 for documentation of additional loan record requirements for that program.

(d) *General.* (1) An institution shall maintain required records in a systematically organized manner.

(2) An institution shall make its records readily available for review by the Secretary or the Secretary's authorized representative at an institutional location designated by the Secretary or the Secretary's authorized representative.

(3) An institution may keep required records in hard copy or in microform, computer file, optical disk, CD-ROM, or other media formats, provided that—

(i) Except for the records described in paragraph (d)(3)(ii) of this section, all record information must be retrievable in a coherent hard copy format or in other media formats acceptable to the Secretary;

(ii) An institution shall maintain the Student Aid Report (SAR) or Institutional Student Information Record (ISIR) used to determine eligibility for title IV, HEA program funds in the format in which it was received by the institution, except that the SAR may be maintained in an imaged media format;

(iii) Any imaged media format used to maintain required records must be capable of reproducing an accurate, legible, and complete copy of the original document, and, when printed, this copy must be approximately the same size as the original document;

(iv) Any document that contains a signature, seal, certification, or any other image or mark required to validate the authenticity of its information must be maintained in its original hard copy or in an imaged media format; and

(v) Participants in the Federal Perkins Loan Program shall follow procedures established in 34 CFR 674.19 for maintaining the original promissory notes and repayment schedules for that program.

(4) If an institution closes, stops providing educational programs, is terminated or suspended from the title IV, HEA programs, or undergoes a change of ownership that results in a change of control as described in 34 CFR 600.31, it shall provide for—

(i) The retention of required records; and

(ii) Access to those records, for inspection and copying, by the Secretary or the Secretary's authorized representative, and, for a school participating in the FFEL Program, the appropriate guaranty agency.

(e) *Record retention.* Unless otherwise directed by the Secretary—

(1) An institution shall keep records relating to its administration of the Federal Perkins Loan, FWS, FSEOG, Federal Pell Grant, ACG, National SMART Grant, or TEACH Grant Program for three years after the end of the award year for which the aid was awarded and disbursed under those programs, provided that an institution shall keep—

(i) The Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, FSEOG, and FWS Programs (FISAP), and any records

necessary to support the data contained in the FISAP, including ''income grid information,'' for three years after the end of the award year in which the FISAP is submitted; and

(ii) Repayment records for a Federal Perkins loan, including records relating to cancellation and deferment requests, in accordance with the provisions of 34 CFR 674.19;

(2)(i) An institution shall keep records relating to a student or parent borrower's eligibility and participation in the FFEL or Direct Loan Program for three years after the end of the award year in which the student last attended the institution; and

(ii) An institution shall keep all other records relating to its participation in the FFEL or Direct Loan Program, including records of any other reports or forms, for three years after the end of the award year in which the records are submitted; and

(3) An institution shall keep all records involved in any loan, claim, or expenditure questioned by a title IV, HEA program audit, program review, investigation, or other review until the later of—

(i) The resolution of that questioned loan, claim, or expenditure; or

(ii) The end of the retention period applicable to the record.

(f) *Examination of records.* (1) An institution that participates in any title IV, HEA program and the institution's third-party servicer, if any, shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution participates, and the institution's accrediting agency, in the conduct of audits, investigations, program reviews, or other reviews authorized by law.

(2) The institution and servicer must cooperate by—

(i) Providing timely access, for examination and copying, to requested records, including but not limited to computerized records and records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any title IV, HEA program funds, and to any pertinent books, documents, papers, or computer programs; and

(ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the title IV, HEA programs for the purpose of obtaining relevant information.

(3) The Secretary considers that an institution or servicer has failed to provide reasonable access to personnel under paragraph (f)(2)(ii) of this section if the institution or servicer—

(i) Refuses to allow those personnel to supply all relevant information;

(ii) Permits interviews with those personnel only if the institution's or servicer's management is present; or

(iii) Permits interviews with those personnel only if the interviews are tape recorded by the institution or servicer.

(4) Upon request of the Secretary, or a lender or guaranty agency in the case of a borrower under the FFEL Program, an institution or servicer promptly shall provide the requester with any information the institution or servicer has respecting the last known address, full name, telephone number, enrollment information, employer, and employer address of a recipient of title IV funds who attends or attended the institution.

(Approved by the Office of Management and Budget under control number 1840–0697)

(Authority: 20 U.S.C. 1070a, 1070a–1, 1070b, 1070g, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087, 1087a, *et seq.* , 1087cc, 1087hh, 1088, 1094, 1099c, 1141, 1232f; 42 U.S.C. 2753; section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

[61 FR 60491, Nov. 27, 1996, as amended at 62 FR 27128, May 16, 1997; 64 FR 59042, Nov. 1, 1999; 71 FR 38002, July 3, 2006; 73 FR 35493, June 23, 2008]

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

(a) An institution may enter into a written contract with a third-party servicer for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(b) Subject to the provisions of paragraph (d) of this section, a third-party servicer is eligible to enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(c) In a contract with an institution, a third-party servicer shall agree to—

(1) Comply with all statutory provisions of or applicable to Title IV of the HEA, all regulatory provisions prescribed under that statutory authority, and all special arrangements, agreements, limitations, suspensions, and terminations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement to use any funds that the servicer administers under any Title IV, HEA program and any interest or other earnings thereon solely for the purposes specified in and in accordance with that program;

(2) Refer to the Office of Inspector General of the Department of Education for investigation any information indicating there is reasonable cause to believe that the institution might have engaged in fraud or other criminal misconduct in connection with the institution's administration of any Title IV, HEA program or an applicant for Title IV, HEA program assistance might have engaged in fraud or other criminal misconduct in connection with his or her application. Examples of the type of information that must be referred are—

(i) False claims by the institution for Title IV, HEA program assistance;

(ii) False claims of independent student status;

(iii) False claims of citizenship;

(iv) Use of false identities;

(v) Forgery of signatures or certifications;

(vi) False statements of income; and

(vii) Payment of any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity engaged in any student recruitment or admission activity or in making decisions regarding the award of title IV, HEA program funds.

(3) Be jointly and severally liable with the institution to the Secretary for any violation by the servicer of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, and any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;

(4) In the case of a third-party servicer that disburses funds (including funds received under the Title IV, HEA programs) or delivers Federal Stafford Loan Program proceeds to a student—

(i) Confirm the eligibility of the student before making that disbursement or delivering those proceeds. This confirmation must include, but is not limited to, any applicable information contained in the records required under § 668.24; and

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

(5) If the servicer or institution terminates the contract, or if the servicer stops providing services for the administration of a Title IV, HEA program, goes out of business, or files a petition under the Bankruptcy Code, return to the institution all—

(i) Records in the servicer's possession pertaining to the institution's participation in the program or programs for which services are no longer provided; and

(ii) Funds, including Title IV, HEA program funds, received from or on behalf of the institution or the institution's students, for the purposes of the program or programs for which services are no longer provided.

(d) A third-party servicer may not enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program, if—

(1)(i) The servicer has been limited, suspended, or terminated by the Secretary within the preceding five years;

(ii) The servicer has had, during the servicer's two most recent audits of the servicer's administration of the Title IV, HEA programs, an audit finding that resulted in the servicer's being required to repay an amount greater than five percent of the funds that the servicer administered under the Title IV, HEA programs for any award year; or

(iii) The servicer has been cited during the preceding five years for failure to submit audit reports required under Title IV of the HEA in a timely fashion; and

(2)(i) In the case of a third-party servicer that has been subjected to a termination action by the Secretary, either the servicer, or one or more persons or entities that the Secretary determines (under the provisions of § 668.15) exercise substantial control over the servicer, or both, have not submitted to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the servicer's potential liabilities arising from the servicer's administration of the Title IV, HEA programs; and

(ii) One or more persons or entities that the Secretary determines (under the provisions of § 668.15) exercise substantial control over the servicer have not agreed to be jointly or severally liable for any liabilities arising from the servicer's administration of the Title IV, HEA programs and civil and criminal monetary penalties authorized under Title IV of the HEA.

(e)(1)(i) An institution that participates in a Title IV, HEA program shall notify the Secretary within 10 days of the date that—

(A) The institution enters into a new contract or significantly modifies an existing contract with a third-party servicer to administer any aspect of that program;

(B) The institution or a third-party servicer terminates a contract for the servicer to administer any aspect of that program; or

(C) A third-party servicer that administers any aspect of the institution's participation in that program stops providing services for the administration of that program, goes out of business, or files a petition under the Bankruptcy Code.

(ii) The institution's notification must include the name and address of the servicer.

(2) An institution that contracts with a third-party servicer to administer any aspect of the institution's participation in a Title IV, HEA program shall provide to the Secretary, upon request, a copy of the contract, including any modifications, and provide information pertaining to the contract or to the servicer's administration of the institution's participation in any Title IV, HEA program.

(Approved by the Office of Management and Budget under control number 1840–0537)

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

[59 FR 22441, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 61 FR 60492, Nov. 27, 1996; 63 FR 40624, July 29, 1998; 64 FR 59042, Nov. 1, 1999; 75 FR 66952, Oct. 29, 2010]

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

(a) An institution's participation in a Title IV, HEA program ends on the date that—

(1) The institution closes or stops providing 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 institution loses its institutional eligibility under 34 CFR part 600;

(3) The institution's participation is terminated under the proceedings in subpart G of this part;

(4) The institution's period of participation, as specified under § 668.13, expires, or the institution's provisional certification is revoked under § 668.13;

(5) The institution's program participation agreement is terminated or expires under § 668.14;

(6) The institution's participation ends under subpart M of this part; or

(7) The Secretary receives a notice from the appropriate State postsecondary review entity designated under 34 CFR part 667 that the institution's participation should be withdrawn.

(b) If an institution's participation in a Title IV, HEA program ends, the institution shall—

(1) Immediately notify the Secretary of that fact;

(2) Submit to the Secretary within 45 days after the date that the participation ends—

(i) All financial, performance, and other reports required by appropriate Title IV, HEA program regulations; and

(ii) A letter of engagement for an independent audit of all funds that the institution received under that program, the report of which shall be submitted to the Secretary within 45 days after the date of the engagement letter;

(3) Inform the Secretary of the arrangements that the institution has made for the proper retention and storage for a minimum of three years of all records concerning the administration of that program;

(4) If the institution's participation in the Federal Perkins Loan Program ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under that program;

(5) If the institution's participation in the LEAP Program ended—

(i) Inform immediately the State in which the institution is located of that fact; and

(ii) Notwithstanding paragraphs (c) through (e) of this section, follow the instructions of that State concerning the end of that participation;

(6) If the institution's participation in all the Title IV, HEA programs ended, inform the Secretary of how the institution will provide for the collection of any outstanding loans made under the National Defense/Direct Student Loan programs; and

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

(c) If an institution closes or stops providing 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, the institution shall—

(1) Return to the Secretary, or otherwise dispose of under instructions from the Secretary, any unexpended funds that the institution has received under the Title IV, HEA programs for attendance at the institution, less the institution's administrative allowance, if applicable; and

(2) Return to the appropriate lenders any Federal Stafford Loan program proceeds that the institution has received but not delivered to, or credited to the accounts of, students attending the institution.

(d)(1) An institution may use funds that it has received under the Federal Pell Grant, ACG, National SMART Grant, or TEACH Grant Program or a campus-based program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to satisfy any unpaid commitment made to a student under that Title IV, HEA program only if—

(i) The institution's participation in that Title IV, HEA program ends during a payment period;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that payment period, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The commitment was made prior to the end of the participation; and

(iv) The commitment was made for attendance during that payment period or a previously completed payment period.

(2) An institution may credit to a student's account or deliver to the student the proceeds of a disbursement of a Federal Family Education Loan Programs loan to satisfy any unpaid commitment made to the student under the Federal Family Education Loan Programs Loan Program only if—

(i) The institution's participation in that Title IV, HEA program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The loan was made for attendance during that period of enrollment.

(iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(3) An institution may use funds that it has received under the Direct Loan Program or request additional funds from the Secretary, under conditions specified by the Secretary, if the institution does not possess sufficient funds, to credit to a student's account or disburse to the student the proceeds of a Direct Loan Program loan only if—

(i) The institution's participation in the Direct Loan Program ends during a period of enrollment;

(ii) The institution continues to provide, from the date that the participation ends until the scheduled completion date of that period of enrollment, educational programs to otherwise eligible students enrolled in the formerly eligible programs of the institution;

(iii) The loan was made for attendance during that period of enrollment; and

(iv) The proceeds of the first disbursement of the loan were delivered to the student or credited to the student's account prior to the end of the participation.

(e) For the purposes of this section—

(1) A commitment under the Federal Pell Grant, ACG, National SMART Grant, and TEACH Grant programs occurs when a student is enrolled and attending the institution and has submitted a valid Student Aid Report to the institution or when an institution has received a valid institutional student information report; and

(2) A commitment under the campus-based programs occurs when a student is enrolled and attending the institution and has received a notice from the institution of the amount that he or she can expect to receive and how and when that amount will be paid.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1070g, 1094, 1099a–3)

[59 FR 22442, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 61 FR 60492, Nov. 27, 1996; 63 FR 40624, July 29, 1998; 64 FR 59042, Nov. 1, 1999; 65 FR 38729, June 22, 2000; 65 FR 65637, Nov. 1, 2000; 69 FR 12276, Mar. 16, 2004; 71 FR 38002, July 3, 2006; 73 FR 35493, June 23, 2008]

§ 668.27 Waiver of annual audit submission requirement.

(a) *General.* (1) At the request of an institution, the Secretary may waive the annual audit submission requirement for the period of time contained in paragraph (b) of this section if the institution satisfies the requirements contained in paragraph (c) of this section and posts a letter of credit in the amount determined in paragraph (d) of this section.

(2) An institution requesting a waiver must submit an application to the Secretary at such time and in such manner as the Secretary prescribes.

(3) The first fiscal year for which an institution may request a waiver is the fiscal year in which it submits its waiver request to the Secretary.

(b) *Waiver period.* (1) If the Secretary grants the waiver, the institution need not submit its compliance or audited financial statement until six months after—

(i) The end of the third fiscal year following the fiscal year for which the institution last submitted a compliance audit and audited financial statement; or

(ii) The end of the second fiscal year following the fiscal year for which the institution last submitted compliance and financial statement audits if the award year in which the institution will apply for recertification is part of the third fiscal year.

(2) The Secretary does not grant a waiver if the award year in which the institution will apply for recertification is part of the second fiscal year following the fiscal year for which the institution last submitted compliance and financial statement audits.

(3) When an institution must submit its next compliance and financial

statement audits under paragraph (b)(1) of this section—

(i) The institution must submit a compliance audit that covers the institution's administration of the title IV, HEA programs for the period for each fiscal year for which an audit did not have to be submitted as a result of the waiver, and an audited financial statement for its last fiscal year; and

(ii) The auditor who conducts the audit must audit the institution's annual determinations for the period subject to the waiver that it satisfied the 90/10 rule in § 600.5 and the other conditions of institutional eligibility in § 600.7 and § 668.8(e)(2), and disclose the results of the audit of the 90/10 rule for each year in accordance with § 668.23(d)(4).

(c) *Criteria for granting the waiver.* The Secretary grants a waiver to an institution if the institution—

(1) Is not a foreign institution;

(2) Did not disburse $200,000 or more of title IV, HEA program funds during each of the two completed award years preceding the institution's waiver request;

(3) Agrees to keep records relating to each award year in the unaudited period for two years after the end of the record retention period in § 668.24(e) for that award year;

(4) Has participated in the title IV, HEA programs under the same ownership for at least three award years preceding the institution's waiver request;

(5) Is financially responsible under § 668.171, and does not rely on the alternative standards of § 668.175 to participate in the title IV, HEA programs;

(6) Is not on the reimbursement or cash monitoring system of payment;

(7) Has not been the subject of a limitation, suspension, fine, or termination proceeding, or emergency action initiated by the Department or a guarantee agency in the three years preceding the institution's waiver request;

(8) Has submitted its compliance audits and audited financial statements for the previous two fiscal years in accordance with and subject to § 668.23, and no individual audit disclosed liabilities in excess of $10,000; and

(9) Submits a letter of credit in the amount determined in paragraph (d) of this section, which must remain in effect until the Secretary has resolved the audit covering the award years subject to the waiver.

(d) *Letter of credit amount.* For purposes of this section, the letter of credit amount equals 10 percent of the amount of title IV, HEA program funds the institution disbursed to or on behalf of its students during the award year preceding the institution's waiver request.

(e) *Rescission of the waiver.* (1) The Secretary rescinds the waiver if the institution—

(i) Disburses $200,000 or more of title IV, HEA program funds for an award year;

(ii) Undergoes a change in ownership that results in a change of control; or

(iii) Becomes the subject of an emergency action or a limitation, suspension, fine, or termination action initiated by the Department or a guarantee agency.

(2) If the Secretary rescinds a waiver, the rescission is effective on the last day of the fiscal year in which the rescission takes place.

(f) *Renewal.* An institution may request a renewal of its waiver when it submits its audits under paragraph (b) of this section. The Secretary grants the waiver if the audits and other information available to the Secretary show that the institution continues to satisfy the criteria for receiving that waiver.

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

[64 FR 58618, Oct. 29, 1999]

§ 668.28 Non-title IV revenue (90/10).

(a) *General* —(1) *Calculating the revenue percentage.* A proprietary institution meets 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 that meet the requirements in 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 and credited in full to the students' accounts at the institution 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 and deemed to be 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 other 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. If any funds from the loan disbursement used in the return calculation under § 668.22 were counted as non-title IV revenue under paragraph (a)(6) of this section, the amount of Title IV, HEA program funds refunded or returned under § 668.22 is considered to consist of pre-ECASLA loan amounts and loan amounts in excess of the loan limits prior to ECASLA in the same proportion to the loan disbursement; 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 = 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^t'' 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)

[74 FR 55937, Oct. 29, 2009]

APPENDIX A TO SUBPART B OF PART 668—STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)

Part III Chapter 3—Independence

(a) The Third general standard for governmental auditing is: In matters relating to the audit work, the audit organization and the individual auditors shall maintain an independent attitude.

(b) This standard places upon the auditor and the audit organization the responsibility for maintaining sufficient independence so that their opinions, conclusions, judgments, and recommendations will be impartial. If the auditor is not sufficiently independent to produce unbiased opinions, conclusions, and judgments, he should state in a prominent place in the audit report his relationship with the organization or officials being audited.[1]

(c) The auditor should consider not only whether his or her own attitude and beliefs permit him or her to be independent but also whether there is anything about his or her situation which would lead others to question his or her independence. Both situations deserve consideration since it is important not only that the auditor be, in fact, independent and impartial but also that other persons will consider him or her so.

(d) There are three general classes of impairments that the auditor needs to consider; these are personal, external, and organizational impairments. If one or more of these are of such significance as to affect the auditor's ability to perform his or her work and report its results impartially, he or she should decline to perform the audit or indicate in the report that he or she was not fully independent.

Personal Impairments

There are some circumstances in which an auditor cannot be impartial because of his or her views or his or her personal situation. These circumstances might include:

1. Relationships of an official, professional, and/or personal nature that might cause the auditor to limit the extent or character of the inquiry, to limit disclosure, or to weaken his or her findings in any way.

2. Preconceived ideas about the objectives or quality of a particular operation or personal likes or dislikes of individuals, groups, or objectives of a particular program.

3. Previous involvement in a decision-making or management capacity in the operations of the governmental entity or program being audited.

4. Biases and prejudices, including those induced by political or social convictions, which result from employment in or loyalty to a particular group, entity, or level of government.

5. Actual or potential restrictive influence when the auditor performs preaudit work and subsequently performs a post audit.

6. Financial interest, direct or indirect, in an organization or facility which is benefiting from the audited programs.

External Impairments

External factors can restrict the audit or impinge on the auditor's ability to form independent and objective opinions and conclusions. For example, under the following conditions either the audit itself could be adversely affected or the auditor would not have complete freedom to make an independent judgment.[2]

[1] If the auditor is not fully independent because he or she is an employee of the audited entity, it will be adequate disclosure to so indicate. If the auditor is a practicing certified public accountant, his or her conduct should be governed by the AICPA ''Statements on Auditing Procedure.''

[2] Some of these situations may constitute justifiable limitations on the scope of the

1. Interference or other influence that improperly or imprudently eliminates, restricts, or modifies the scope or character of the audit.
2. Interference with the selection or application of audit procedures of the selection of activities to be examined.
3. Denial of access to such sources of information as books, records, and supporting documents or denial or opportunity to obtain explanations by officials and employees of the governmental organization, program, or activity under audit.
4. Interference in the assignment of personnel to the audit task.
5. Retaliatory restrictions placed on funds or other resources dedicated to the audit operation.
6. Activity to overrule or significantly influence the auditors judgment as to the appropriate content of the audit report.
7. Influences that place the auditor's continued employment in jeopardy for reasons other than competency or the need for audit services.
8. Unreasonable restriction on the time allowed to competently complete an audit assignment.

Organizational Impairments

(a) The auditor's independence can be affected by his or her place within the organizational structure of governments. Auditors employed by Federal, State, or local government units may be subject to policy direction from superiors who are involved either directly or indirectly in the government management process. To achieve maximum independence such auditors and the audit organization itself not only should report to the highest practicable echelon within their government but should be organizationally located outside the line-management function of the entity under audit.

(b) These auditors should also be sufficiently removed from political pressures to ensure that they can conduct their auditing objectively and can report their conclusions completely without fear of censure. Whenever feasible they should be under a system which will place decisions on compensation, training, job tenure, and advancement on a merit basis.

(c) When independent public accountants or other independent professionals are engaged to perform work that includes inquiries into compliance with applicable laws and regulations, efficiency and economy of operations, or achievement of program results, they should be engaged by someone other than the officials responsible for the direction of the effort being audited. This practice removes the pressure that may result if the auditor must criticize the performance of those by whom he or she was engaged. To remove this obstacle to independence, governments should arrange to have auditors engaged by officials not directly involved in operations to be audited.

[51 FR 41921, Nov. 19, 1986. Redesignated at 65 FR 65650, Nov. 1, 2000]

APPENDIX B TO SUBPART B OF PART 668—APPENDIX I, STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES, AND FUNCTIONS (GAO)

Qualifications of Independent Auditors Engaged by Governmental Organizations

(a) When outside auditors are engaged for assignments requiring the expression of an opinion on financial reports of governmental organizations, only fully qualified public accountants should be employed. The type of qualifications, as stated by the Comptroller General, deemed necessary for financial audits of governmental organizations and programs is quoted below:

''Such audits shall be conducted * * * by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States: Except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975; Provided, That if the Secretary deems it necessary in the public interest, he may prescribe by regulations higher standard than those required for the practice of public accountancy by the regulatory authorities of the States.''[1]

work. In such cases the limitation should be identified in the auditor's report.

[1] Letter (B–148144, September 15, 1970) from the Comptroller General to the heads of Federal departments and agencies. The reference to ''Secretary'' means the head of the department or agency.

(b) The standards for examination and evaluation require consideration of applicable laws and regulations in the auditor's examination. The standards for reporting require a statement in the auditor's report regarding any significant instances of noncompliance disclosed by his or her examination and evaluation work. What is to be included in this statement requires judgment. Significant instances of noncompliance, even those not resulting in legal liability to the audited entity, should be included. Minor procedural noncompliance need not be disclosed.

(c) Although the reporting standard is generally on an exception basis—that only noncompliance need be reported—it should be recognized that governmental entities often want positive statements regarding whether or not the auditor's tests disclosed instances of noncompliance. This is particularly true in grant programs where authorizing agencies frequently want assurance in the auditor's report that this matter has been considered. For such audits, auditors should obtain an understanding with the authorizing agency as to the extent to which such positive comments on compliance are desired. When coordinated audits are involved, the audit program should specify the extent of comments that the auditor is to make regarding compliance.

(d) When noncompliance is reported, the auditor should place the findings in proper perspective. The extent of instances of noncompliance should be related to the number of cases examined to provide the reader with a basis for judging the prevalence of noncompliance.

[45 FR 86856, Dec. 31, 1980. Redesignated at 65 FR 65650, Nov. 1, 2000]

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

$$\frac{\sum \text{Adjusted Student Title IV Revenue}}{\sum \text{Adjusted Student Title IV Revenue} + \sum \text{Student Non-Title IV Revenue} + \text{Total Revenue from Other Sources}} = \text{90/10 Revenue Percentage}$$

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.

∑ 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).

∑ 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.**

[74 FR 55938, Oct. 29, 2009]

Subpart C—Student Eligibility

SOURCE: 60 FR 61810, Dec. 1, 1995, unless otherwise noted.

§ 668.31 Scope.

This subpart contains rules by which a student establishes eligibility for assistance under the title IV, HEA programs. In order to qualify as an eligible student, a student must meet all applicable requirements in this subpart.

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

§ 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:

(a)(1) (i) Is a regular student enrolled, or accepted for enrollment, in an eligible program at an eligible institution;

(ii) For purposes of the FFEL and Direct Loan programs, is enrolled for no longer than one twelve-month period in

a course of study necessary for enrollment in an eligible program; or

(iii) For purposes of the Federal Perkins Loan, FWS, FFEL, and Direct Loan programs, is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State; and

(2) For purposes of the ACG, National SMART Grant, FFEL, and Direct Loan programs, is at least a half-time student.

(b) Is not enrolled in either an elementary or secondary school.

(c)(1) For purposes of the ACG, National SMART Grant, and FSEOG programs, does not have a baccalaureate or first professional degree;

(2) For purposes of the Federal Pell Grant Program—

(i)(A) Does not have a baccalaureate or first professional degree; or

(B) Is enrolled in a postbaccalaureate teacher certificate or licensing program as described in 34 CFR 690.6(c); and

(ii) Is not incarcerated in a Federal or State penal institution;

(3) For purposes of the Federal Perkins Loan, FFEL, and Direct Loan programs, is not incarcerated; and

(4) For the purposes of the TEACH Grant program—

(i) For an undergraduate student other than a student enrolled in a post-baccalaureate program, has not completed the requirements for a first baccalaureate degree; or

(ii) For the purposes of a student in a first post-baccalaureate program, has not completed the requirements for a post-baccalaureate program as described in 34 CFR 686.2(d).

(d) Satisfies the citizenship and residency requirements contained in § 668.33 and subpart I of this part.

(e)(1) Has a high school diploma or its recognized equivalent;

(2) Has obtained a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part;

(3) Is enrolled in an eligible institution that participates in a State ''process'' approved by the Secretary under subpart J of this part;

(4) Was home-schooled, and either—

(i) Obtained a secondary school completion credential for home school (other than a high school diploma or its recognized equivalent) provided for under State law; or

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

(5) Has been determined by the institution to have the ability to benefit from the education or training offered by the institution based on the satisfactory completion of 6 semester hours, 6 trimester hours, 6 quarter hours, or 225 clock hours that are applicable toward a degree or certificate offered by the institution.

(f) Maintains satisfactory academic progress in his or her course of study according to the institution's published standards of satisfactory academic progress that meet the requirements of § 668.34.

(g) Except as provided in § 668.35—

(1) Is not in default, and certifies that he or she is not in default, on a loan made under any title IV, HEA loan program;

(2) Has not obtained loan amounts that exceed annual or aggregate loan limits made under any title IV, HEA loan program;

(3) Does not have property subject to a judgment lien for a debt owed to the United States; and

(4) Is not liable for a grant or Federal Perkins loan overpayment. A student receives a grant or Federal Perkins loan overpayment if the student received grant or Federal Perkins loan payments that exceeded the amount he or she was eligible to receive; or if the student withdraws, that exceeded the amount he or she was entitled to receive for non-institutional charges.

(h) Files a Statement of Educational Purpose in accordance with the instructions of the Secretary.

(i) Has a correct social security number as determined under § 668.36, except that this requirement does not apply to

students who are residents of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau.

(j) Satisfies the Selective Service registration requirements contained in § 668.37, and, if applicable, satisfies the requirements of § 668.38 and § 668.39 involving enrollment in telecommunication and correspondence courses and a study abroad program, respectively.

(k) Satisfies the program specific requirements contained in—

(1) 34 CFR 674.9 for the Federal Perkins Loan program;

(2) 34 CFR 675.9 for the FWS program;

(3) 34 CFR 676.9 for the FSEOG program;

(4) 34 CFR 682.201 for the FFEL programs;

(5) 34 CFR 685.200 for the William D. Ford Federal Direct Loan programs;

(6) 34 CFR 690.75 for the Federal Pell Grant program;

(7) 34 CFR 691.75 for the ACG and National SMART Grant programs;

(8) 34 CFR 692.40 for the LEAP program; and

(9) 34 CFR 686.11 for the TEACH Grant program.

(l) Is not ineligible under § 668.40.

(m) In the case of a student who has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance, has completed the repayment of such assistance to:

(1) The Secretary; or

(2) The holder, in the case of a title IV, HEA program loan.

(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.

(Authority: 20 U.S.C. 1070g, 1091; 28 U.S.C. 3201(e))

[60 FR 61810, Dec. 1, 1995, as amended at 63 FR 40624, July 29, 1998; 64 FR 57358, Oct. 22, 1999; 64 FR 58291, Oct. 28, 1999; 67 FR 67073, Nov. 1, 2002; 71 FR 38002, July 3, 2006; 71 FR 45696, Aug. 9, 2006; 73 FR 35493, June 23, 2008; 74 FR 20221, May 1, 2009; 74 FR 55942, Oct. 29, 2009; 75 FR 66952, Oct. 29, 2010]

§ 668.33 Citizenship and residency requirements.

(a) Except as provided in paragraph (b) of this section, to be eligible to receive title IV, HEA program assistance, a student must—

(1) Be a citizen or national of the United States; or

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(b)(1) A citizen of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau is eligible to receive funds under the FWS, FSEOG, and Federal Pell Grant programs if the student attends an eligible institution in a State, or a public or nonprofit private eligible institution of higher education in those jurisdictions.

(2) A student who satisfies the requirements of paragraph (a) of this section is eligible to receive funds under the FWS, FSEOG, and Federal Pell Grant programs if the student attends a public or nonprofit private eligible institution of higher education in the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau.

(c)(1) If a student asserts that he or she is a citizen of the United States on the Free Application for Federal Student Aid (FAFSA), the Secretary attempts to confirm that assertion under a data match with the Social Security Administration. If the Social Security Administration confirms the student's citizenship, the Secretary reports that confirmation to the institution and the student.

(2) If the Social Security Administration does not confirm the student's citizenship assertion under the data match with the Secretary, the student can establish U.S. citizenship by submitting documentary evidence of that status to the institution. Before denying title IV, HEA assistance to a student for failing to establish citizenship, an institution must give a student at

least 30 days notice to produce evidence of U.S. citizenship.

(Authority: 20 U.S.C. 1091, 5 U.S.C. 552a)

[52 FR 45727, Dec. 1, 1987, as amended at 71 FR 38002, July 3, 2006; 74 FR 20221, May 1, 2009]

§ 668.34 Satisfactory academic progress.

(a) *Satisfactory academic progress policy*. An institution must establish a reasonable satisfactory academic progress policy for determining whether an otherwise eligible student is making satisfactory academic progress in his or her educational program and may receive assistance under the title IV, HEA programs. The Secretary considers the institution's policy to be reasonable if—

(1) The policy is at least as strict as the policy the institution applies to a student who is not receiving assistance under the title IV, HEA programs;

(2) The policy provides for consistent application of standards to all students within categories of students, *e.g.*, full-time, part-time, undergraduate, and graduate students, and educational programs established by the institution;

(3) The policy provides that a student's academic progress is evaluated—

(i) At the end of each payment period if the educational program is either one academic year in length or shorter than an academic year; or

(ii) For all other educational programs, at the end of each payment period or at least annually to correspond with the end of a payment period;

(4)(i) The policy specifies the grade point average (GPA) that a student must achieve at each evaluation, or if a GPA is not an appropriate qualitative measure, a comparable assessment measured against a norm; and

(ii) If a student is enrolled in an educational program of more than two academic years, the policy specifies that at the end of the second academic year, the student must have a GPA of at least a ''C'' or its equivalent, or have academic standing consistent with the institution's requirements for graduation;

(5)(i) The policy specifies the pace at which a student must progress through his or her educational program to ensure that the student will complete the program within the maximum timeframe, as defined in paragraph (b) of this section, and provides for measurement of the student's progress at each evaluation; and

(ii) An institution calculates the pace at which the student is progressing by dividing the cumulative number of hours the student has successfully completed by the cumulative number of hours the student has attempted. In making this calculation, the institution is not required to include remedial courses;

(6) The policy describes how a student's GPA and pace of completion are affected by course incompletes, withdrawals, or repetitions, or transfers of credit from other institutions. Credit hours from another institution that are accepted toward the student's educational program must count as both attempted and completed hours;

(7) Except as provided in paragraphs (c) and (d) of this section, the policy provides that, at the time of each evaluation, a student who has not achieved the required GPA, or who is not successfully completing his or her educational program at the required pace, is no longer eligible to receive assistance under the title IV, HEA programs;

(8) If the institution places students on financial aid warning, or on financial aid probation, as defined in paragraph (b) of this section, the policy describes these statuses and that—

(i) A student on financial aid warning may continue to receive assistance under the title IV, HEA programs for one payment period despite a determination that the student is not making satisfactory academic progress. Financial aid warning status may be assigned without an appeal or other action by the student; and

(ii) A student on financial aid probation may receive title IV, HEA program funds for one payment period. While a student is on financial aid probation, the institution may require the student to fulfill specific terms and conditions such as taking a reduced course load or enrolling in specific courses. At the end of one payment period on financial aid probation, the student must meet the institution's satisfactory academic progress standards or

meet the requirements of the academic plan developed by the institution and the student to qualify for further title IV, HEA program funds;

(9) If the institution permits a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy describes—

(i) How the student may reestablish his or her eligibility to receive assistance under the title IV, HEA programs;

(ii) The basis on which a student may file an appeal: The death of a relative, an injury or illness of the student, or other special circumstances; and

(iii) Information the student must submit regarding why the student failed to make satisfactory academic progress, and what has changed in the student's situation that will allow the student to demonstrate satisfactory academic progress at the next evaluation;

(10) If the institution does not permit a student to appeal a determination by the institution that he or she is not making satisfactory academic progress, the policy must describe how the student may reestablish his or her eligibility to receive assistance under the title IV, HEA programs; and

(11) The policy provides for notification to students of the results of an evaluation that impacts the student's eligibility for title IV, HEA program funds.

(b) *Definitions.* The following definitions apply to the terms used in this section:

Appeal. Appeal means a process by which a student who is not meeting the institution's satisfactory academic progress standards petitions the institution for reconsideration of the student's eligibility for title IV, HEA program assistance.

Financial aid probation. Financial aid probation means a status assigned by an institution to a student who fails to make satisfactory academic progress and who has appealed and has had eligibility for aid reinstated.

Financial aid warning. Financial aid warning means a status assigned to a student who fails to make satisfactory academic progress at an institution that evaluates academic progress at the end of each payment period.

Maximum timeframe. Maximum timeframe means—

(1) For an undergraduate program measured in credit hours, a period that is no longer than 150 percent of the published length of the educational program, as measured in credit hours;

(2) For an undergraduate program measured in clock hours, a period that is no longer than 150 percent of the published length of the educational program, as measured by the cumulative number of clock hours the student is required to complete and expressed in calendar time; and

(3) For a graduate program, a period defined by the institution that is based on the length of the educational program.

(c) *Institutions that evaluate satisfactory academic progress at the end of each payment period.* (1) An institution that evaluates satisfactory academic progress at the end of each payment period and determines that a student is not making progress under its policy may nevertheless disburse title IV, HEA program funds to the student under the provisions of paragraph (c)(2), (c)(3), or (c)(4) of this section.

(2) For the payment period following the payment period in which the student did not make satisfactory academic progress, the institution may—

(i) Place the student on financial aid warning, and disburse title IV, HEA program funds to the student; or

(ii) Place a student directly on financial aid probation, following the procedures outlined in paragraph (d)(2) of this section and disburse title IV, HEA program funds to the student.

(3) For the payment period following a payment period during which a student was on financial aid warning, the institution may place the student on financial aid probation, and disburse title IV, HEA program funds to the student if—

(i) The institution evaluates the student's progress and determines that student did not make satisfactory academic progress during the payment period the student was on financial aid warning;

(ii) The student appeals the determination; and

(iii)(A) The institution determines that the student should be able to meet

the institution's satisfactory academic progress standards by the end of the subsequent payment period; or

(B) The institution develops an academic plan for the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

(4) A student on financial aid probation for a payment period may not receive title IV, HEA program funds for the subsequent payment period unless the student makes satisfactory academic progress or the institution determines that the student met the requirements specified by the institution in the academic plan for the student.

(d) *Institutions that evaluate satisfactory academic progress annually or less frequently than at the end of each payment period.* (1) An institution that evaluates satisfactory academic progress annually or less frequently than at the end of each payment period and determines that a student is not making progress under its policy may nevertheless disburse title IV, HEA program funds to the student under the provisions of paragraph (d)(2) or (d)(3) of this section.

(2) The institution may place the student on financial aid probation and may disburse title IV, HEA program funds to the student for the subsequent payment period if—

(i) The institution evaluates the student and determines that the student is not making satisfactory academic progress;

(ii) The student appeals the determination; and

(iii)(A) The institution determines that the student should be able to be make satisfactory academic progress during the subsequent payment period and meet the institution's satisfactory academic progress standards at the end of that payment period; or

(B) The institution develops an academic plan for the student that, if followed, will ensure that the student is able to meet the institution's satisfactory academic progress standards by a specific point in time.

(3) A student on financial aid probation for a payment period may not receive title IV, HEA program funds for the subsequent payment period unless the student makes satisfactory academic progress or the institution determines that the student met the requirements specified by the institution in the academic plan for the student.

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

[75 FR 66953, Oct. 29, 2010]

§ 668.35 Student debts under the HEA and to the U.S.

(a) A student who is in default on a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays the loan in full; or

(2) Except as limited by paragraph (c) of this section—

(i) Makes arrangements, that are satisfactory to the holder of the loan and in accordance with the individual title IV, HEA loan program regulations, to repay the loan balance; and

(ii) Makes at least six consecutive monthly payments under those arrangements.

(b) A student who is subject to a judgment for failure to repay a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays the debt in full; or

(2) Except as limited by paragraph (c) of this section—

(i) Makes repayment arrangements that are satisfactory to the holder of the debt; and

(ii) Makes at least six consecutive, voluntary monthly payments under those arrangements. Voluntary payments are those payments made directly by the borrower, and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(c) A student who reestablishes eligibility under either paragraph (a)(2) of this section or paragraph (b)(2) of this section may not reestablish eligibility again under either of those paragraphs.

(d) A student who is not in default on a loan made under a title IV, HEA loan program, but has inadvertently obtained loan funds under a title IV, HEA

loan program in an amount that exceeds the annual or aggregate loan limits under that program, may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays in full the excess loan amount; or

(2) Makes arrangements, satisfactory to the holder of the loan, to repay that excess loan amount.

(e) Except as provided in 34 CFR 668.22(h), a student who receives an overpayment under the Federal Perkins Loan Program, or under a title IV, HEA grant program, may nevertheless be eligible to receive title IV, HEA program assistance if—

(1) The student pays the overpayment in full;

(2) The student makes arrangements satisfactory to the holder of the overpayment debt to pay the overpayment;

(3) The overpayment amount is less than $25 and is neither a remaining balance nor a result of the application of the overaward threshold in 34 CFR 673.5(d); or

(4) The overpayment is an amount that a student is not required to return under the requirements of § 668.22(h)(3)(ii)(B).

(f) A student who has property subject to a judgement lien for a debt owed to the United States may nevertheless be eligible to receive title IV, HEA program assistance if the student-

(1) Pays the debt in full; or

(2) Makes arrangements, satisfactory to the United States, to pay the debt.

(g) (1) A student is not liable for a Federal Pell Grant overpayment received in an award year if the institution can eliminate that overpayment by adjusting subsequent Federal Pell Grant payments in that same award year.

(2) A student is not liable for an ACG overpayment received in an award year if—

(i) The institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant, ACG, or National SMART Grant) payments in that same award year; or

(ii) The institution cannot eliminate the overpayment under paragraph (g)(2)(i) of this section but can eliminate that overpayment by adjusting subsequent ACG payments in that same award year.

(3) A student is not liable for a National SMART Grant overpayment received in an award year if—

(i) The institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant, ACG, or National SMART Grant) payments in that same award year; or

(ii) The institution cannot eliminate the overpayment under paragraph (g)(3)(i) of this section but can eliminate that overpayment by adjusting subsequent National SMART Grant payments in that same award year.

(4) A student is not liable for a TEACH Grant overpayment received in an award year if—

(i) The institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant, ACG, National SMART Grant, or TEACH Grant) payments in that same award year; or

(ii) The institution cannot eliminate the overpayment under paragraph (g)(4)(i) of this section but can eliminate that overpayment by adjusting subsequent TEACH Grant payments in that same award year.

(5) A student is not liable for a FSEOG or LEAP overpayment or Federal Perkins loan overpayment received in an award year if the institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant) payments in that same award year.

(h) A student who otherwise is in default on a loan made under a title IV, HEA loan program, or who otherwise owes an overpayment on a title IV, HEA program grant or Federal Perkins loan, is not considered to be in default or owe an overpayment if the student—

(1) Obtains a judicial determination that the debt has been discharged or is dischargeable in bankruptcy; or

(2) Demonstrates to the satisfaction of the holder of the debt that—

(i) When the student filed the petition for bankruptcy relief, the loan, or demand for the payment of the overpayment, had been outstanding for the period required under 11 U.S.C.

523(a)(8)(A), exclusive of applicable suspensions of the repayment period for either debt of the kind defined in 34 CFR 682.402(m); and

(ii) The debt otherwise qualifies for discharge under applicable bankruptcy law; and

(i) In the case of a student who has been convicted of, or has pled nolo contendere or guilty to a crime involving fraud in obtaining title IV, HEA program assistance, has completed the repayment of such assistance to:

(1) The Secretary; or

(2) The holder, in the case of a title IV, HEA program loan.

(Authority: 20 U.S.C. 1070g, 1091; 11 U.S.C. 523, 525)

[60 FR 61810, Dec. 1, 1995, as amended at 65 FR 38729, June 22, 2000; 67 FR 67073, Nov. 1, 2002; 71 FR 38003, July 3, 2006; 71 FR 45696, Aug. 9, 2006; 71 FR 64397, Nov. 1, 2006; 73 FR 35493, June 23, 2008]

§ 668.36 Social security number.

(a)(1) Except for residents of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, the Secretary attempts to confirm the social security number a student provides on the Free Application for Federal Student Aid (FAFSA) under a data match with the Social Security Administration. If the Social Security Administration confirms that number, the Secretary notifies the institution and the student of that confirmation.

(2) If the student's verified social security number is the same number as the one he or she provided on the FAFSA, and the institution has no reason to believe that the verified social security number is inaccurate, the institution may consider the number to be accurate.

(3) If the Social Security Administration does not verify the student's social security number on the FAFSA, or the institution has reason to believe that the verified social security number is inaccurate, the student can provide evidence to the institution, such as the student's social security card, indicating the accuracy of the student's social security number. An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to produce that evidence.

(4) An institution may not deny, reduce, delay, or terminate a student's eligibility for assistance under the title IV, HEA programs because verification of that student's social security number is pending.

(b)(1) An institution may not disburse any title IV, HEA program funds to a student until the institution is satisfied that the student's reported social security number is accurate.

(2) The institution shall ensure that the Secretary is notified of the student's accurate social security number if the student demonstrates the accuracy of a social security number that is not the number the student included on the FAFSA.

(c) If the Secretary determines that the social security number provided to an institution by a student is incorrect, and that student has not provided evidence under paragraph (a)(3) of this section indicating the accuracy of the social security number, and a loan has been guaranteed for the student under the FFEL program, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, until the Secretary or the institution determines that the social security number provided by the student is correct, but the guaranty may not be voided or otherwise nullified before the date that the lender and the guaranty agency receive the notice.

(d) Nothing in this section permits the Secretary to take any compliance, disallowance, penalty or other regulatory action against—

(1) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or

(2) Any student with respect to any error in a social security number, unless the error was the result of fraud on the part of the student.

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

§ 668.37 Selective Service registration.

(a)(1) To be eligible to receive title IV, HEA program funds, a male student who is subject to registration with the

Selective Service must register with the Selective Service.

(2) A male student does not have to register with the Selective Service if the student—

(i) Is below the age of 18, or was born before January 1, 1960;

(ii) Is enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(A) The Citadel, Charleston, South Carolina;

(B) North Georgia College, Dahlonega, Georgia;

(C) Norwich University, Northfield, Vermont; or

(D) Virginia Military Institute, Lexington, Virginia; or

(iii) Is a commissioned officer of the Public Health Service or a member of the Reserve of the Public Health Service who is on active duty as provided in section 6(a)(2) of the Military Selective Service Act.

(b)(1) When the Secretary processes a male student's FAFSA, the Secretary determines whether the student is registered with the Selective Service under a data match with the Selective Service.

(2) Under the data match, Selective Service reports to the Secretary whether its records indicate that the student is registered, and the Secretary reports the results of the data match to the student and the institution the student is attending.

(c)(1) If the Selective Service does not confirm through the data match, that the student is registered, the student can establish that he—

(i) Is registered;

(ii) Is not, or was not required to be, registered;

(iii) Has registered since the submission of the FAFSA; or

(iv) Meets the conditions of paragraph (d) of this section.

(2) An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to provide evidence to establish the condition described in paragraph (c)(1) of this section.

(d) An institution may determine that a student, who was required to, but did not register with the Selective Service, is not ineligible to receive title IV, HEA assistance for that reason, if the student can demonstrate by submitting clear and unambiguous evidence to the institution that—

(1) He was unable to present himself for registration for reasons beyond his control such as hospitalization, incarceration, or institutionalization; or

(2) He is over 26 and when he was between 18 and 26 and required to register—

(i) He did not knowingly and willfully fail to register with the Selective Service; or

(ii) He served as a member of one of the U.S. Armed Forces on active duty and received a DD Form 214, ''Certificate of Release or Discharge from Active Duty,'' showing military service with other than the reserve forces and National Guard.

(e) For purposes of paragraph (d)(2)(i) of this section, an institution may consider that a student did not knowingly and willfully fail to register with the Selective Service only if—

(1) The student submits to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register; and

(2) The institution does not have uncontroverted evidence that the student knowingly and willfully failed to register.

(f)(1) A student who is required to register with the Selective Service and has been denied title IV, HEA program assistance because he has not proven to the institution that he has registered with Selective Service may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (f)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (f)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official shall not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(g) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(h) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(Authority: 20 U.S.C. 1091 and 50 App. 462)

[60 FR 61812, Dec. 1, 1995, as amended at 61 FR 3776, Feb. 1, 1996]

§ 668.38 Enrollment in telecommunications and correspondence courses.

(a) If a student is enrolled in correspondence courses, the student is eligible to receive title IV, HEA program assistance only if the correspondence courses are part of a program that leads to an associate, bachelor's, or graduate degree.

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

(2) For purposes of paragraph (b)(1) of this section, an institution of higher education is one that is not an institute or school described in section 3(3)(C) of the Carl D. Perkins Vocational and Applied Technology Act of 1995.

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

[60 FR 61810, Dec. 1, 1995, as amended at 64 FR 57358, Oct. 22, 1999; 71 FR 45696, Aug. 9, 2006]

§ 668.39 Study abroad programs.

A student enrolled in a program of study abroad is eligible to receive title IV, HEA program assistance if—

(a) The student remains enrolled as a regular student in an eligible program at an eligible institution during his or her program of study abroad; and

(b) The eligible institution approves the program of study abroad for academic credit. However, the study abroad program need not be required as part of the student's eligible degree program.

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

§ 668.40 Conviction for possession or sale of illegal drugs.

(a)(1) A student is ineligible to receive title IV, HEA program funds, for the period described in paragraph (b) of this section, if the student has been convicted of an offense under any Federal or State law involving the possession or sale of illegal drugs for conduct that occurred during a period of enrollment for which the student was receiving title IV, HEA program funds. However, the student may regain eligibility before that time period expires under the conditions described in paragraph (c) of this section.

(2) For purposes of this section, a conviction means only a conviction that is on a student's record. A conviction that was reversed, set aside, or removed from the student's record is not relevant for purposes of this section, nor is a determination or adjudication arising out of a juvenile proceeding.

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

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

(i) Only one time for possession of illegal drugs, the student is ineligible to

receive title IV, HEA program funds for one year after the date of conviction;

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

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

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

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

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

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

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

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

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

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

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

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

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

[64 FR 57358, Oct. 22, 1999, as amended at 71 FR 45696, Aug. 9, 2006]

Subpart D—Institutional and Financial Assistance Information for Students

SOURCE: 51 FR 43323, Dec. 1, 1986, unless otherwise noted.

§ 668.41 Reporting and disclosure of information.

(a) *Definitions*. The following definitions apply to this subpart:

Athletically related student aid means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. Other student aid, of which a student-athlete simply happens to be the recipient, is not athletically related student aid.

Certificate or degree-seeking student means a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

First-time undergraduate student means an entering undergraduate who has never attended any institution of higher education. It includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

Notice means a notification of the availability of information an institution is required by this subpart to disclose, provided to an individual on a one-to-one basis through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet website or an Intranet website does not constitute a notice.

Official fall reporting date means that date (in the fall) on which an institution must report fall enrollment data

to either the State, its board of trustees or governing board, or some other external governing body.

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).

Prospective employee means an individual who has contacted an eligible institution for the purpose of requesting information concerning employment with that institution.

Prospective student means an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Undergraduate students, for purposes of §§ 668.45 and 668.48 only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate.

(b) *Disclosure through Internet or Intranet websites.* Subject to paragraphs (c)(2), (e)(2) through (4), or (g)(1)(ii) of this section, as appropriate, an institution may satisfy any requirement to disclose information under paragraph (d), (e), or (g) of this section for—

(1) Enrolled students or current employees by posting the information on an Internet website or an Intranet website that is reasonably accessible to the individuals to whom the information must be disclosed; and

(2) Prospective students or prospective employees by posting the information on an Internet website.

(c) *Notice to enrolled students.* (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g) of this section, and pursuant to 34 CFR 99.7 (§ 99.7 sets forth the notification requirements of the Family Educational Rights and Privacy Act of 1974). The notice must list and briefly describe the information and tell the student how to obtain the information.

(2) An institution that discloses information to enrolled students as required under paragraph (d), (e), or (g) of this section by posting the information on an Internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

(i) The exact electronic address at which the information is posted; and

(ii) A statement that the institution will provide a paper copy of the information on request.

(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.

(f) *Prospective student-athletes and their parents, high school coach and guidance counselor—report on completion or graduation rates for student-athletes.* (1)(i) Except under the circumstances described in paragraph (f)(1)(ii) of this section, when an institution offers a prospective student-athlete athletically related student aid, it must provide to the prospective student-athlete,

and his or her parents, high school coach, and guidance counselor, the report produced pursuant to § 668.48(a).

(ii) An institution's responsibility under paragraph (f)(1)(i) of this section with reference to a prospective student athlete's high school coach and guidance counselor is satisfied if—

(A) The institution is a member of a national collegiate athletic association;

(B) The association compiles data on behalf of its member institutions, which data the Secretary determines are substantially comparable to those required by § 668.48(a); and

(C) The association distributes the compilation to all secondary schools in the United States.

(2) By July 1 of each year, an institution must submit to the Secretary the report produced pursuant to § 668.48.

(g) *Enrolled students, prospective students, and the public—report on athletic program participation rates and financial support data.* (1)(i) An institution of higher education subject to § 668.47 must, not later than October 15 of each year, make available to enrolled students, prospective students, and the public, the report produced pursuant to § 668.47(c). The institution must make the report easily accessible to students, prospective students, and the public and must provide the report promptly to anyone who requests it.

(ii) The institution must provide notice to all enrolled students, pursuant to paragraph (c)(1) of this section, and prospective students of their right to request the report described in paragraph (g)(1) of this section. If the institution chooses to make the report available by posting the disclosure on an Internet website or an Intranet website, it must provide in the notice 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 on request. For prospective students, the institution may not use an Intranet website for this purpose.

(2) An institution must submit the report described in paragraph (g)(1)(i) of this section to the Secretary within 15 days of making it available to students, prospective students, and the public.

(h) *Loan repayment warning for proprietary institutions*—(1) *Calculation of loan repayment rate.* For each award year, the Secretary calculates a proprietary institution's loan repayment rate, for the cohort of borrowers who entered repayment on their FFEL or Direct Loans at any time during the two-year cohort period, using the methodology in § 668.413(b)(3), provided that, for the purpose of this paragraph (h)—

(i) The reference to ''program'' in § 668.413(b)(3)(vi) is read to refer to ''institution'';

(ii) ''Award year'' means the 12-month period that begins on July 1 of one year and ends on June 30 of the following year;

(iii) ''Borrower'' means a student who received a FFEL or Direct Loan for enrolling in a gainful employment program at the institution; and

(iv) ''Two-year cohort period'' is defined as set forth in § 668.402.

(2) *Issuing and appealing loan repayment rates.* (i) For each award year, the Secretary notifies an institution of its final loan repayment rate.

(ii) If an institution's final loan repayment rate shows that the median borrower has not either fully repaid all FFEL or Direct Loans received for enrollment in the institution or made loan payments sufficient to reduce by at least one dollar the outstanding balance of each of the borrower's FFEL or Direct Loans received for enrollment in the institution—

(A) Using the calculation described in paragraph (h)(4)(ii) of this section, the institution may submit an appeal to the Secretary within 15 days of receiving notification of its final loan repayment rate; and

(B) The Secretary will notify the institution if the appeal is—

(*1*) Granted and the institution qualifies for an exemption from the warning requirement under paragraph (h)(4) of this section; or

(*2*) Not granted, and the institution must comply with the warning requirement under paragraph (h)(3) of this section.

(3) *Loan repayment warning*—(i) *Promotional materials.* (A) Except as provided in paragraph (h)(4) of this section, for any award year in which the institution's loan repayment rate

shows that the median borrower has not either fully repaid, or made loan payments sufficient to reduce by at least one dollar the outstanding balance of, each of the borrower's FFEL or Direct Loans received for enrollment in the institution, the institution must, in all promotional materials that are made available to prospective or enrolled students by or on behalf of the institution, include a loan repayment warning in a form, place, and manner prescribed by the Secretary in a notice published in the FEDERAL REGISTER. The warning language must read: ''U.S. Department of Education Warning: A majority of recent student loan borrowers at this school are not paying down their loans,'' unless stated otherwise by the Secretary in a notice published in the FEDERAL REGISTER. Before publishing that notice, the Secretary may conduct consumer testing to help ensure that the warning is meaningful and helpful to students.

(B) Promotional materials include, but are not limited to, an institution's Web site, catalogs, invitations, flyers, billboards, and advertising on or through radio, television, video, print media, social media, or the Internet.

(C) The institution must ensure that all promotional materials, including printed materials, about the institution are accurate and current at the time they are published, approved by a State agency, or broadcast.

(ii) *Clarity of warning*. The institution must ensure that the warning is prominent, clear, and conspicuous. The warning is not prominent, clear, and conspicuous if it is difficult to read or hear, or placed where it can be easily overlooked. In written materials, including email, Internet advertising and promotional materials, print media, and other advertising or hard-copy promotional materials, the warning must be included on the cover page or home page and any other pages with information on a program of study and any pages with information on costs and financial aid. For television and video materials, the warning must be both spoken and written simultaneously. The Secretary may require the institution to modify its promotional materials, including its Web site, if the warning is not prominent, clear, and conspicuous.

(4) *Exemptions*. An institution is not required to provide a warning under paragraph (h)(3) of this section based on a final loan repayment rate for that award year if—

(i) That rate is based on fewer than 10 borrowers in the cohort described in paragraph (h)(1) of this section; or

(ii) The institution demonstrates to the Secretary's satisfaction that not all of its programs constitute GE programs and that if the borrowers in the non-GE programs were included in the calculation of the loan repayment rate, the loan repayment rate would show that the median borrower has made loan payments sufficient to reduce by at least one dollar the outstanding balance of each of the borrower's FFEL or Direct Loans received for enrollment in the institution.

(i) *Financial protection disclosures*—(1) *General*. An institution must deliver a disclosure to enrolled and prospective students in the form and manner described in paragraph (i)(3), (4), and (5) of this section, and post that disclosure to its Web site as described in paragraph (i)(6) of this section, within 30 days of notifying the Secretary under § 668.171(h) of the occurrence of a triggering event or events identified pursuant to paragraph (i)(2) of this section. The requirements in this paragraph (i) apply for the 12-month period following the date the institution notifies the Secretary under § 668.171(h) of a triggering event or events identified under paragraph (i)(2).

(2) *Triggering events*. The Secretary will conduct consumer testing to inform the identification of events for which a disclosure is required. The Secretary will consumer test each of the events identified in § 668.171(c) through (g), as well as other events that result in an institution being required to provide financial protection to the Department, to determine which of these events are most meaningful to students in their educational decision-making. The Secretary will identify the triggering events for which a disclosure is required under paragraph (i)(1) in a document published in the FEDERAL REGISTER.

(3) *Form of disclosure.* The Secretary will conduct consumer testing to ensure the form of the disclosure is meaningful and helpful to students. The Secretary will specify the form and placement of the disclosure in a notice published in the FEDERAL REGISTER following the consumer testing.

(4) *Delivery to enrolled students.* An institution must deliver the disclosure required under this paragraph (i) to each enrolled student in writing by—

(i) Hand-delivering the disclosure as a separate document to the student individually or as part of a group presentation; or

(ii)(A) Sending the disclosure to the student's primary email address or delivering the disclosure through the electronic method used by the institution for communicating with the student about institutional matters; and

(B) Ensuring that the disclosure is the only substantive content in the message sent to the student under this paragraph unless the Secretary specifies additional, contextual language to be included in the message.

(5) *Delivery to prospective students.* An institution must deliver the disclosure required under this paragraph (i) to a prospective student before that student enrolls, registers, or enters into a financial obligation with the institution by—

(i) Hand-delivering the disclosure as a separate document to the student individually, or as part of a group presentation; or

(ii)(A) Sending the disclosure to the student's primary email address or delivering the disclosure through the electronic method used by the institution for communicating with prospective students about institutional matters; and

(B) Ensuring that the disclosure is the only substantive content in the message sent to the student under this paragraph unless the Secretary specifies additional, contextual language to be included in the message.

(6) *Institutional Web site.* An institution must prominently provide the disclosure required under this paragraph (i) in a simple and meaningful manner on the home page of the institution's Web site.

(Approved by the Office of Management and Budget under control number 1845–0004)

(Authority: 20 U.S.C. 1092, 1094, 1099c)

[64 FR 59066, Nov. 1, 1999, as amended at 74 FR 55942, Oct. 29, 2009; 81 FR 76070, Nov. 1, 2016]

§ 668.42 Financial assistance information.

(a)(1) Information on financial assistance that the institution must publish and make readily available to current and prospective students under this subpart includes, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.

(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(4) The institution must describe the terms and conditions of the loans students receive under the Federal Family Education Loan Program, the William D. Ford Federal Direct Student Loan Program, and the Federal Perkins Loan Program.

(b) For each program referred to in paragraph (a) of this section, the information provided by the institution must describe—

(1) The procedures and forms by which students apply for assistance;

(2) The student eligibility requirements;

(3) The criteria for selecting recipients from the group of eligible applicants; and

(4) The criteria for determining the amount of a student's award.

(c) The institution must describe the rights and responsibilities of students receiving financial assistance and, specifically, assistance under the title IV, HEA programs. This description must include specific information regarding—

(1) Criteria for continued student eligibility under each program;

(2)(i) Standards which the student must maintain in order to be considered to be making satisfactory progress

in his or her course of study for the purpose of receiving financial assistance; and

(ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance;

(3) The method by which financial assistance disbursements will be made to the students and the frequency of those disbursements;

(4) The terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans;

(5) The general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package; and

(6) The exit counseling information the institution provides and collects as required by 34 CFR 674.42 for borrowers under the Federal Perkins Loan Program, by 34 CFR 685.304 for borrowers under the William D. Ford Federal Direct Student Loan Program, and by 34 CFR 682.604 for borrowers under the Federal Stafford Loan Program.

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

(Authority: 20 U.S.C. 1092)

[51 FR 43323, Dec. 1, 1986. Redesignated and amended at 64 FR 59067, Nov. 1, 1999; 74 FR 55649, Oct. 29, 2009]

§ 668.43 Institutional information.

(a) Institutional information that the institution must make readily available to enrolled and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of costs for necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Estimates of transportation costs for students; and

(v) Any additional cost of a program in which a student is enrolled or expresses a specific interest;

(2) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portions of costs paid to the institution;

(3) The requirements and procedures for officially withdrawing from the institution;

(4) A summary of the requirements under § 668.22 for the return of title IV grant or loan assistance;

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program;

(iii) The institution's faculty and other instructional personnel; and

(iv) Any plans by the institution for improving the academic program of the institution, upon a determination by the institution that such a plan exists;

(6) The names of associations, agencies or governmental bodies that accredit, approve, or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(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;

(8) The titles of persons designated under § 668.44 and information regarding how and where those persons may be contacted;

(9) A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs;

(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;

(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; and

(11) A description of the transfer of credit policies established by the institution which must include a statement of the institution's current transfer of credit policies that includes, at a minimum—

(i) Any established criteria the institution uses regarding the transfer of credit earned at another institution; and

(ii) A list of institutions with which the institution has established an articulation agreement; and

(12) A description of written arrangements the institution has entered into in accordance with § 668.5, including, but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

(iv) Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

(b) The institution must make available for review to any enrolled or prospective student upon request, a copy of the documents describing the institution's accreditation and its State, Federal, or tribal approval or licensing. The institution must also provide its students or prospective students with contact information for filing complaints with its accreditor and with its State approval or licensing entity and any other relevant State official or agency that would appropriately handle a student's complaint.

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

(Authority: 20 U.S.C. 1092)

[64 FR 59068, Nov. 1, 1999, as amended at 74 FR 55943, Oct. 29, 2009; 75 FR 66954, Oct. 29, 2010]

§ 668.44 Availability of employees for information dissemination purposes.

(a) *Availability*. (1) Except as provided in paragraph (b) of this section each institution shall designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining the information specified in §§ 668.42, 668.43, 668.45 and 668.46.

(2) If the institution designates one person, that person shall be available, upon reasonable notice, to any enrolled or prospective student throughout the normal administrative working hours of that institution.

(3) If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) *Waiver*. (1) the Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution's total enrollment, or the portion of the enrollment participating in the title IV, HEA programs, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution's total enrollment or the number of title IV, HEA program recipients is too small, the Secretary considers whether there will be an insufficient demand for information dissemination services among its enrolled or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To receive a waiver, the institution shall apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

(Authority: 20 U.S.C. 1092)

[51 FR 43323, Dec. 1, 1986. Redesignated at 64 FR 59067, Nov. 1, 1999, as amended at 69 FR 12276, Mar. 16, 2004]

§ 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 for 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)

[74 FR 55944, Oct. 29, 2009]

§ 668.46 Institutional security policies and crime statistics.

(a) *Definitions.* Additional definitions that apply to this section:

Business day. Monday through Friday, excluding any day when the institution is closed.

Campus. (i) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(ii) Any building or property that is within or reasonably contiguous to the area identified in paragraph (i) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

Campus security authority. (i) A campus police department or a campus security department of an institution.

(ii) Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (i) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.

(iii) Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.

(iv) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a pastoral or professional counselor as defined below, the official is not considered a campus security authority when acting as a pastoral or professional counselor.

Clery geography. (i) For the purposes of collecting statistics on the crimes listed in paragraph (c) of this section for submission to the Department and inclusion in an institution's annual security report, Clery geography includes—

(A) Buildings and property that are part of the institution's campus;

(B) The institution's noncampus buildings and property; and

(C) Public property within or immediately adjacent to and accessible from the campus.

(ii) For the purposes of maintaining the crime log required in paragraph (f) of this section, Clery geography includes, in addition to the locations in paragraph (i) of this definition, areas within the patrol jurisdiction of the campus police or the campus security department.

Dating violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

(i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(ii) For the purposes of this definition—

(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence.

(iii) For the purposes of complying with the requirements of this section and § 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Domestic violence. (i) A felony or misdemeanor crime of violence committed—

(A) By a current or former spouse or intimate partner of the victim;

(B) By a person with whom the victim shares a child in common;

(C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

(D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or

(E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the

jurisdiction in which the crime of violence occurred.

(ii) For the purposes of complying with the requirements of this section and § 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) program. A nationwide, cooperative statistical effort in which city, university and college, county, State, Tribal, and federal law enforcement agencies voluntarily report data on crimes brought to their attention. The UCR program also serves as the basis for the definitions of crimes in Appendix A to this subpart and the requirements for classifying crimes in this subpart.

Hate crime. A crime reported to local police agencies or to a campus security authority that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim. For the purposes of this section, the categories of bias include the victim's actual or perceived race, religion, gender, gender identity, sexual orientation, ethnicity, national origin, and disability.

Hierarchy Rule. A requirement in the FBI's UCR program that, for purposes of reporting crimes in that system, when more than one criminal offense was committed during a single incident, only the most serious offense be counted.

Noncampus building or property. (i) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or

(ii) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

Pastoral counselor. A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

Professional counselor. A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of the counselor's license or certification.

Programs to prevent dating violence, domestic violence, sexual assault, and stalking. (i) Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that—

(A) Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and

(B) Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

(ii) Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees, as defined in paragraph (j)(2) of this section.

Public property. All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

Referred for campus disciplinary action. The referral of any person to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

Sexual assault. An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in Appendix A of this subpart.

Stalking. (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

(ii) For the purposes of this definition—

(A) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.

(C) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(iii) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Test. Regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.

(b) *Annual security report.* An institution must prepare an annual security report reflecting its current policies that contains, at a minimum, the following information:

(1) The crime statistics described in paragraph (c) of this section.

(2) A statement of policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including—

(i) Policies for making timely warning reports to members of the campus community, as required by paragraph (e) of this section, regarding the occurrence of crimes described in paragraph (c)(1) of this section;

(ii) Policies for preparing the annual disclosure of crime statistics;

(iii) A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c)(1) of this section for the purposes of making timely warning reports and the annual statistical disclosure; and

(iv) Policies or procedures for victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

(3) A statement of policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(4) A statement of policies concerning campus law enforcement that—

(i) Addresses the enforcement authority and jurisdiction of security personnel;

(ii) Addresses the working relationship of campus security personnel with State and local police agencies, including—

(A) Whether those security personnel have the authority to make arrests; and

(B) Any agreements, such as written memoranda of understanding between the institution and such agencies, for the investigation of alleged criminal offenses.

(iii) Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies, when the victim of a crime elects to, or is unable to, make such a report; and

(iv) Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

(5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(6) A description of programs designed to inform students and employees about the prevention of crimes.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity by students at noncampus locations

of student organizations officially recognized by the institution, including student organizations with noncampus housing facilities.

(8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws.

(10) A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA, otherwise known as the Drug-Free Schools and Communities Act of 1989. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

(11) A statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking, as defined in paragraph (a) of this section, and of procedures that the institution will follow when one of these crimes is reported. The statement must include—

(i) A description of the institution's educational programs and campaigns to promote the awareness of dating violence, domestic violence, sexual assault, and stalking, as required by paragraph (j) of this section;

(ii) Procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including written information about—

(A) The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order;

(B) How and to whom the alleged offense should be reported;

(C) Options about the involvement of law enforcement and campus authorities, including notification of the victim's option to—

(*1*) Notify proper law enforcement authorities, including on-campus and local police;

(*2*) Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and

(*3*) Decline to notify such authorities; and

(D) Where applicable, the rights of victims and the institution's responsibilities for orders of protection, ''no-contact'' orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution;

(iii) Information about how the institution will protect the confidentiality of victims and other necessary parties, including how the institution will—

(A) Complete publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the victim, as defined in section 40002(a)(20) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20)); and

(B) Maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures;

(iv) A statement that the institution will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community;

(v) A statement that the institution will provide written notification to victims about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures. The institution must make such accommodations or provide such protective measures if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement;

(vi) An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required by paragraph (k) of this section; and

(vii) A statement that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section.

(12) A statement advising the campus community where law enforcement agency information provided by a State under section 121 of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16921), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(13) A statement of policy regarding emergency response and evacuation procedures, as required by paragraph (g) of this section.

(14) A statement of policy regarding missing student notification procedures, as required by paragraph (h) of this section.

(c) *Crime statistics*—(1) *Crimes that must be reported and disclosed.* An institution must report to the Department and disclose in its annual security report statistics for the three most recent calendar years concerning the number of each of the following crimes that occurred on or within its Clery geography and that are reported to local police agencies or to a campus security authority:

(i) Primary crimes, including—

(A) Criminal homicide:

(*1*) Murder and nonnegligent manslaughter; and

(*2*) Negligent manslaughter.

(B) Sex offenses:

(*1*) Rape;

(*2*) Fondling;

(*3*) Incest; and

(*4*) Statutory rape.

(C) Robbery.

(D) Aggravated assault.

(E) Burglary.

(F) Motor vehicle theft.

(G) Arson.

(ii) Arrests and referrals for disciplinary actions, including—

(A) Arrests for liquor law violations, drug law violations, and illegal weapons possession.

(B) Persons not included in paragraph (c)(1)(ii)(A) of this section who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

(iii) Hate crimes, including—

(A) The number of each type of crime in paragraph (c)(1)(i) of this section that are determined to be hate crimes; and

(B) The number of the following crimes that are determined to be hate crimes:

(*1*) Larceny-theft.

(*2*) Simple assault.

(*3*) Intimidation.

(*4*) Destruction/damage/vandalism of property.

(iv) Dating violence, domestic violence, and stalking as defined in paragraph (a) of this section.

(2) *All reported crimes must be recorded.* (i) An institution must include in its crime statistics all crimes listed in paragraph (c)(1) of this section occurring on or within its Clery geography that are reported to a campus security authority for purposes of Clery Act reporting. Clery Act reporting does not require initiating an investigation or disclosing personally identifying information about the victim, as defined in section 40002(a)(20) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20)).

(ii) An institution may not withhold, or subsequently remove, a reported crime from its crime statistics based on a decision by a court, coroner, jury, prosecutor, or other similar noncampus official.

(iii) An institution may withhold, or subsequently remove, a reported crime from its crime statistics in the rare situation where sworn or commissioned law enforcement personnel have fully investigated the reported crime and, based on the results of this full investigation and evidence, have made a formal determination that the crime report is false or baseless and therefore ''unfounded.'' Only sworn or commissioned law enforcement personnel may

''unfound'' a crime report for purposes of reporting under this section. The recovery of stolen property, the low value of stolen property, the refusal of the victim to cooperate with the prosecution, and the failure to make an arrest do not ''unfound'' a crime report.

(A) An institution must report to the Department and disclose in its annual security report statistics the total number of crime reports listed in paragraph (c)(1) of this section that were ''unfounded'' and subsequently withheld from its crime statistics pursuant to paragraph (c)(2)(iii) of this section during each of the three most recent calendar years.

(B) [Reserved]

(3) *Crimes must be recorded by calendar year.* (i) An institution must record a crime statistic for the calendar year in which the crime was reported to local police agencies or to a campus security authority.

(ii) When recording crimes of stalking by calendar year, an institution must follow the requirements in paragraph (c)(6) of this section.

(4) *Hate crimes must be recorded by category of bias.* For each hate crime recorded under paragraph (c)(1)(iii) of this section, an institution must identify the category of bias that motivated the crime. For the purposes of this paragraph, the categories of bias include the victim's actual or perceived—

(i) Race;

(ii) Gender;

(iii) Gender identity;

(iv) Religion;

(v) Sexual orientation;

(vi) Ethnicity;

(vii) National origin; and

(viii) Disability.

(5) *Crimes must be recorded by location.* (i) An institution must specify whether each of the crimes recorded under paragraph (c)(1) of this section occurred—

(A) On campus;

(B) In or on a noncampus building or property; or

(C) On public property.

(ii) An institution must identify, of the crimes that occurred on campus, the number that took place in dormitories or other residential facilities for students on campus.

(iii) When recording stalking by location, an institution must follow the requirements in paragraph (c)(6) of this section.

(6) *Recording reports of stalking.* (i) When recording reports of stalking that include activities in more than one calendar year, an institution must record a crime statistic for each and every year in which the course of conduct is reported to a local police agency or to a campus security authority.

(ii) An institution must record each report of stalking as occurring at only the first location within the institution's Clery geography in which:

(A) A perpetrator engaged in the stalking course of conduct; or

(B) A victim first became aware of the stalking.

(7) *Identification of the victim or the accused.* The statistics required under paragraph (c) of this section do not include the identification of the victim or the person accused of committing the crime.

(8) *Pastoral and professional counselor.* An institution is not required to report statistics under paragraph (c) of this section for crimes reported to a pastoral or professional counselor.

(9) *Using the FBI's UCR program and the Hierarchy Rule.* (i) An institution must compile the crime statistics for murder and nonnegligent manslaughter, negligent manslaughter, rape, robbery, aggravated assault, burglary, motor vehicle theft, arson, liquor law violations, drug law violations, and illegal weapons possession using the definitions of those crimes from the ''Summary Reporting System (SRS) User Manual'' from the FBI's UCR Program, as provided in Appendix A to this subpart.

(ii) An institution must compile the crime statistics for fondling, incest, and statutory rape using the definitions of those crimes from the ''National Incident-Based Reporting System (NIBRS) User Manual'' from the FBI's UCR Program, as provided in Appendix A to this subpart.

(iii) An institution must compile the crime statistics for the hate crimes of larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property using the definitions provided in the ''Hate Crime Data

Collection Guidelines and Training Manual'' from the FBI's UCR Program, as provided in Appendix A to this subpart.

(iv) An institution must compile the crime statistics for dating violence, domestic violence, and stalking using the definitions provided in paragraph (a) of this section.

(v) In counting crimes when more than one offense was committed during a single incident, an institution must conform to the requirements of the Hierarchy Rule in the ''Summary Reporting System (SRS) User Manual.

(vi) If arson is committed, an institution must always record the arson in its statistics, regardless of whether or not it occurs in the same incident as another crime.

(vii) If rape, fondling, incest, or statutory rape occurs in the same incident as a murder, an institution must record both the sex offense and the murder in its statistics.

(10) *Use of a map.* In complying with the statistical reporting requirements under this paragraph (c) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(11) *Statistics from police agencies.* (i) In complying with the statistical reporting requirements under paragraph (c) of this section, an institution must make a reasonable, good-faith effort to obtain statistics for crimes that occurred on or within the institution's Clery geography and may rely on the information supplied by a local or State police agency.

(ii) If the institution makes such a reasonable, good-faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

(d) *Separate campus.* An institution must comply with the requirements of this section for each separate campus.

(e) *Timely warning and emergency notification.* (1) An institution must, in a manner that is timely and that withholds as confidential the names and other identifying information of victims, as defined in section 40002(a)(20) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20)), and that will aid in the prevention of similar crimes, report to the campus community on crimes that are—

(i) Described in paragraph (c)(1) of this section;

(ii) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (b)(2) of this section or local police agencies; and

(iii) Considered by the institution to represent a threat to students and employees.

(2) An institution is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

(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.

(f) *Crime log.* (1) An institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred within its Clery geography, as described in paragraph (ii) of the definition of *Clery geography* in paragraph (a) of this section, and that is reported to the campus police or the campus security department. This log must include—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(2) The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, of the report of the information

to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

(3)(i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would—

(A) Jeopardize an ongoing criminal investigation or the safety of an individual;

(B) Cause a suspect to flee or evade detection; or

(C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse effect described in that paragraph is no longer likely to occur.

(4) An institution may withhold under paragraph (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.

(5) The institution must make the crime 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.

(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 to identify a contact person or persons whom the institution shall notify within 24 hours of the determination that the student is missing, if the student has been 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 within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and

(vi) Advise students that the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination 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 that the student is missing;

(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 that the student is missing; 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 within 24 hours that the student is missing.

(i) [Reserved]

(j) *Programs to prevent dating violence, domestic violence, sexual assault, and stalking.* As required by paragraph (b)(11) of this section, an institution must include in its annual security report a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking.

(1) The statement must include—

(i) A description of the institution's primary prevention and awareness programs for all incoming students and new employees, which must include—

(A) A statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking, as those terms are defined in paragraph (a) of this section;

(B) The definition of ''dating violence,'' ''domestic violence,'' ''sexual assault,'' and ''stalking'' in the applicable jurisdiction;

(C) The definition of ''consent,'' in reference to sexual activity, in the applicable jurisdiction;

(D) A description of safe and positive options for bystander intervention;

(E) Information on risk reduction; and

(F) The information described in paragraphs (b)(11) and (k)(2) of this section; and

(ii) A description of the institution's ongoing prevention and awareness campaigns for students and employees, including information described in paragraph (j)(1)(i)(A) through (F) of this section.

(2) For the purposes of this paragraph (j)—

(i) *Awareness programs* means community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

(ii) *Bystander intervention* means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

(iii) *Ongoing prevention and awareness campaigns* means programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution and including information described in paragraph (j)(1)(i)(A) through (F) of this section.

(iv) *Primary prevention programs* means programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

(v) *Risk reduction* means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

(3) An institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking must include, at a minimum, the information described in paragraph (j)(1) of this section.

(k) *Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking.* As required by paragraph (b)(11)(vi) of this section, an institution must include in its annual security report a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as defined in paragraph (a) of this section, and that—

(1)(i) Describes each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking;

(ii) Describes the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking;

(iii) Lists all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking; and

(iv) Describes the range of protective measures that the institution may offer to the victim following an allegation of dating violence, domestic violence, sexual assault, or stalking;

(2) Provides that the proceedings will—

(i) Include a prompt, fair, and impartial process from the initial investigation to the final result;

(ii) Be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;

(iii) Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;

(iv) Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties; and

(v) Require simultaneous notification, in writing, to both the accuser and the accused, of—

(A) The result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking;

(B) The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available;

(C) Any change to the result; and

(D) When such results become final.

(3) For the purposes of this paragraph (k)—

(i) A prompt, fair, and impartial proceeding includes a proceeding that is—

(A) Completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay;

(B) Conducted in a manner that—

(*1*) Is consistent with the institution's policies and transparent to the accuser and accused;

(*2*) Includes timely notice of meetings at which the accuser or accused, or both, may be present; and

(*3*) Provides timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings; and

(C) Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.

(ii) *Advisor* means any individual who provides the accuser or accused support, guidance, or advice.

(iii) *Proceeding* means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, factfinding investigations, formal or informal meetings, and hearings. *Proceeding* does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.

(iv) *Result* means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution. Notwithstanding section 444 of the General Education Provisions Act (20 U.S.C. 1232g), commonly referred to as the Family Educational Rights and Privacy Act (FERPA), the result must also include the rationale for the result and the sanctions.

(l) Compliance with paragraph (k) of this section does not constitute a violation of FERPA.

(m) *Prohibition on retaliation.* An institution, or an officer, employee, or agent of an institution, may not retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision in this section.

[79 FR 62783, Oct. 20, 2014]

§ 668.47 Report on athletic program participation rates and financial support data.

(a) *Applicability.* This section applies to a co-educational institution of higher education that—

(1) Participates in any title IV, HEA program; and

(2) Has an intercollegiate athletic program.

(b) *Definitions.* The following definitions apply for purposes of this section only.

(1) *Expenses*—(i) *Expenses* means expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.

(ii) *Operating expenses* means all expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as ''game-day expenses''), for—

(A) Lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and

(B) Officials.

(iii) *Recruiting expenses* means all expenses an institution incurs attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used

for recruiting purposes) for both recruits and personnel engaged in recruiting, any other expenses for official and unofficial visits, and all other expenses related to recruiting.

(2) *Institutional salary* means all wages and bonuses an institution pays a coach as compensation attributable to coaching.

(3)(i) *Participants* means students who, as of the day of a varsity team's first scheduled contest—

(A) Are listed by the institution on the varsity team's roster;

(B) Receive athletically related student aid; or

(C) Practice with the varsity team and receive coaching from one or more varsity coaches.

(ii) Any student who satisfies one or more of the criteria in paragraphs (b)(3)(i)(A) through (C) of this section is a participant, including a student on a team the institution designates or defines as junior varsity, freshman, or novice, or a student withheld from competition to preserve eligibility (*i.e.*, a redshirt), or for academic, medical, or other reasons.

(4) *Reporting year* means a consecutive twelve-month period of time designated by the institution for the purposes of this section.

(5) *Revenues* means revenues attributable to intercollegiate athletic activities. This includes revenues from appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, State or other government support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities.

(6) *Undergraduate students* means students who are consistently designated as such by the institution.

(7) *Varsity team* means a team that—

(i) Is designated or defined by its institution or an athletic association as a varsity team; or

(ii) Primarily competes against other teams that are designated or defined by their institutions or athletic associations as varsity teams.

(c) *Report.* An institution described in paragraph (a) of this section must annually, for the preceding reporting year, prepare a report that contains the following information:

(1) The number of male and the number of female full-time undergraduate students that attended the institution.

(2) A listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

(i) The total number of participants as of the day of its first scheduled contest of the reporting year, the number of participants who also participated on another varsity team, and the number of other varsity teams on which they participated.

(ii) Total operating expenses attributable to the team, except that an institution may report combined operating expenses for closely related teams, such as track and field or swimming and diving. Those combinations must be reported separately for men's and women's teams.

(iii) In addition to the data required by paragraph (c)(2)(ii) of this section, an institution may report operating expenses attributable to the team on a per-participant basis.

(iv)(A) Whether the head coach was male or female, was assigned to the team on a full-time or part-time basis, and, if assigned on a part-time basis, whether the head coach was a full-time or part-time employee of the institution.

(B) The institution must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.

(v)(A) The number of assistant coaches who were male and the number of assistant coaches who were female, and, within each category, the number who were assigned to the team on a full-time or part-time basis, and, of those assigned on a part-time basis, the number who were full-time and part-time employees of the institution.

(B) The institution must consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for purposes of this report.

(3) The unduplicated head count of the individuals who were listed under

paragraph (c)(2)(i) of this section as a participant on at least one varsity team, by gender.

(4)(i) Revenues derived by the institution according to the following categories (Revenues not attributable to a particular sport or sports must be included only in the total revenues attributable to intercollegiate athletic activities, and, if appropriate, revenues attributable to men's sports combined or women's sports combined. Those revenues include, but are not limited to, alumni contributions to the athletic department not targeted to a particular sport or sports, investment interest income, and student activity fees.):

(A) Total revenues attributable to its intercollegiate athletic activities.

(B) Revenues attributable to all men's sports combined.

(C) Revenues attributable to all women's sports combined.

(D) Revenues attributable to football.

(E) Revenues attributable to men's basketball.

(F) Revenues attributable to women's basketball.

(G) Revenues attributable to all men's sports except football and basketball, combined.

(H) Revenues attributable to all women's sports except basketball, combined.

(ii) In addition to the data required by paragraph (c)(4)(i) of this section, an institution may report revenues attributable to the remainder of the teams, by team.

(5) Expenses incurred by the institution, according to the following categories (Expenses not attributable to a particular sport, such as general and administrative overhead, must be included only in the total expenses attributable to intercollegiate athletic activities.):

(i) Total expenses attributable to intercollegiate athletic activities.

(ii) Expenses attributable to football.

(iii) Expenses attributable to men's basketball.

(iv) Expenses attributable to women's basketball.

(v) Expenses attributable to all men's sports except football and basketball, combined.

(vi) Expenses attributable to all women's sports except basketball, combined.

(6) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, aggregately for men's teams, and aggregately for women's teams.

(7) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(8) The total amount of recruiting expenses incurred, aggregately for all men's teams, and aggregately for all women's teams.

(9)(i) The average annual institutional salary of the non-volunteer head coaches of all men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer head coaches of all women's teams, across all offered sports, on a per person and a per full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If a head coach has responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(10)(i) The average annual institutional salary of the non-volunteer assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer assistant coaches of women's teams, across all offered sports, on a per person and a full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If an assistant coach had responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent

with the coach's responsibilities for the different teams.

(Approved by the Office of Management and Budget under control number 1845–0010)

(Authority: 20 U.S.C. 1092)

[64 FR 59071, Nov. 1, 1999]

§ 668.48 Report on completion or graduation rates for student-athletes.

(a)(1) Annually, by July 1, an institution that is attended by students receiving athletically-related student aid must produce a report containing the following information:

(i) The number of students, categorized by race and gender, who attended that institution during the year prior to the submission of the report.

(ii) The number of students described in paragraph (a)(1)(i) of this section who received athletically-related student aid, categorized by race and gender within each sport.

(iii) The completion or graduation rate and if applicable, transfer-out rate of all the entering, certificate- or degree-seeking, full-time, undergraduate students described in § 668.45(a)(1), categorized by race and gender.

(iv) The completion or graduation rate and if applicable, transfer-out rate of the entering students described in § 668.45(a)(1) who received athletically-related student aid, categorized by race and gender within each sport.

(v) The average completion or graduation rate and if applicable, transfer-out rate for the four most recent completing or graduating classes of entering students described in § 668.45(a)(1), (3), and (4) categorized by race and gender. If an institution has completion or graduation rates and, if applicable, transfer-out rates for fewer than four of those classes, it must disclose the average rate of those classes for which it has rates.

(vi) The average completion or graduation rate and if applicable, transfer-out rate of the four most recent completing or graduating classes of entering students described in § 668.45 (a)(1) who received athletically-related student aid, categorized by race and gender within each sport. If an institution has completion or graduation rates and if applicable, transfer-out rates for fewer than four of those classes, it must disclose the average rate of those classes for which it has rates.

(2) For purposes of this section, *sport* means—

(i) Basketball;

(ii) Football;

(iii) Baseball;

(iv) Cross-country and track combined; and

(v) All other sports combined.

(3) If a category of students identified in paragraph (a)(1)(iv) above contains five or fewer students, the institution need not disclose information on that category of students.

(b) The provisions of § 668.45 (a), (b), (c), and (d) apply for purposes of calculating the completion or graduation rates and, if applicable, transfer-out rates required under paragraphs (a)(1)(iii) through (vi) of this section.

(c) Each institution of higher education described in paragraph (a) of this section may also provide to students and the Secretary supplemental information containing—

(1) The graduation or completion rate of the students who transferred into the institution; and

(2) The number of students who transferred out of the institution.

(d) The provisions of § 668.45(e) apply for purposes of this section.

(Approved by the Office of Management and Budget under control number 1845–0004)

(Authority: 20 U.S.C. 1092)

[60 FR 61788, Dec. 1, 1995. Redesignated and amended at 64 FR 59067, 59072, Nov. 1, 1999; 69 FR 12276, Mar. 16, 2004]

§ 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, employees, 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 and employees. 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 persons who received fire-related injuries 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)

[74 FR 55946, Oct. 29, 2009]

§ 668.50 Institutional disclosures for distance or correspondence programs.

(a) *General*. In addition to the other institutional disclosure requirements established in this and other subparts, an institution described under 34 CFR 600.9(a)(1) or (b) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must provide the information described in paragraphs (b) and (c) of this section to enrolled and prospective students in that program.

(b) *Public disclosures*. An institution described under 34 CFR 600.9(a)(1) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships and practicums, must make available the following information to enrolled and prospective students of such program, the form and content of which the Secretary may determine:

(1)(i) Whether the institution is authorized by each State in which enrolled students reside to provide the program;

(ii) Whether the institution is authorized through a State authorization reciprocity agreement, as defined in 34 CFR 600.2, to provide the program; and

(iii) An explanation of the consequences, including ineligibility for title IV, HEA funds, for a student who changes his or her State of residence to a State where the institution does not meet State requirements or, in the case of a GE program, as defined under § 668.402, where the program does not meet licensure or certification requirements in the State;

(2)(i) If the institution is required to provide a disclosure under paragraph (b)(1)(i) of this section, a description of the process for submitting complaints, including contact information for the receipt of consumer complaints at the appropriate State authorities in the State in which the institution's main campus is located, as required under § 668.43(b); and

(ii) If the institution is required to provide a disclosure under paragraph (b)(1)(ii) of this section, and that agreement establishes a complaint process as described in 34 CFR 600.9(c)(2)(ii), a description of the process for submitting complaints that was established in the reciprocity agreement, including contact information for receipt of consumer complaints at the appropriate State authorities;

(3) A description of the process for submitting consumer complaints in each State in which the program's enrolled students reside, including contact information for receipt of consumer complaints at the appropriate State authorities;

(4) Any adverse actions a State entity has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(5) Any adverse actions an accrediting agency has initiated, and the years in which such actions were initiated, related to postsecondary education programs offered solely through distance education or correspondence courses at the institution for the five calendar years prior to the year in which the disclosure is made;

(6) Refund policies with which the institution is required to comply by any State in which enrolled students reside for the return of unearned tuition and fees; and

(7)(i) The applicable educational prerequisites for professional licensure or certification for the occupation for which the program prepares students to enter in—

(A) Each State in which the program's enrolled students reside; and

(B) Any other State for which the institution has made a determination regarding such prerequisites;

(ii) If the institution makes a determination with respect to certification or licensure prerequisites in a State, whether the program does or does not satisfy the applicable educational prerequisites for professional licensure or certification in that State; and

(iii) For any State as to which the institution has not made a determination with respect to the licensure or certification prerequisites, a statement to that effect.

(c) *Individualized disclosures.* (1) An institution described under 34 CFR 600.9(a)(1) or (b) that offers an educational program that is provided, or can be completed solely through distance education or correspondence courses, excluding internships or practicums, must disclose directly and individually—

(i) Prior to each prospective student's enrollment, any determination by the institution that the program does not meet licensure or certification prerequisites in the State of the student's residence; and

(ii) To each enrolled and prospective student—

(A) Any adverse action initiated by a State or an accrediting agency related to postsecondary education programs offered by the institution solely through distance education or correspondence study within 30 days of the institution's becoming aware of such action; or

(B) Any determination by the institution that the program ceases to meet licensure or certification prerequisites of a State within 14 calendar days of that determination.

(2) For a prospective student who received a disclosure under paragraph (c)(1)(i) of this section and who subsequently enrolls in the program, the institution must receive acknowledgment from that student that the student received the disclosure and be able to demonstrate that it received the student's acknowledgment.

(Authority: 20 U.S.C. 1092)

EFFECTIVE DATE NOTE: At 81 FR 92262, Dec. 19, 2016, §668.50 was added, however, At 83 FR 31303, July 3, 2018, this amendment was delayed to be effective July 1, 2020.

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 (UCR) Program. The definitions for *murder, rape, robbery, aggravated assault, burglary, motor vehicle theft, weapons: carrying, possessing, etc., law violations, drug abuse violations,* and *liquor law violations* are from the ''Summary Reporting System (SRS) User Manual'' from the FBI's UCR Program. The definitions of fondling, incest, and statutory rape are excerpted from the ''National Incident-Based Reporting System (NIBRS) User Manual'' from the FBI's UCR Program. The definitions of *larceny-theft (except motor vehicle theft), simple assault, intimidation,* and *destruction/damage/vandalism of property* are from the ''Hate Crime Data Collection Guidelines and Training Manual'' from the FBI's UCR Program.

CRIME DEFINITIONS FROM THE SUMMARY REPORTING SYSTEM (SRS) USER MANUAL FROM THE FBI'S UCR PROGRAM

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

Rape

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Robbery

The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

Aggravated Assault

An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

Burglary

The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.

Motor Vehicle Theft

The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned—including joyriding.)

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.

CRIME DEFINITIONS FROM THE NATIONAL INCIDENT-BASED REPORTING SYSTEM (NIBRS) USER MANUAL FROM THE FBI'S UCR PROGRAM

Sex Offenses

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

A. *Fondling*—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

B. *Incest*—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

C. *Statutory Rape*—Sexual intercourse with a person who is under the statutory age of consent.

CRIME DEFINITIONS FROM THE HATE CRIME DATA COLLECTION GUIDELINES AND TRAINING MANUAL FROM THE FBI'S UCR PROGRAM

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.

[79 FR 62789, Oct. 20, 2014]

EFFECTIVE DATE NOTE: At 81 FR 92262, Dec. 19,2016, § 668.50 was added, effective July 1,

2018. This amendment was further delayed at 83 FR 31303, July 3, 2018 until July 1, 2020.

Subpart E—Verification and Updating of Student Aid Application Information

SOURCE: 75 FR 66954, Oct. 29, 2010, unless otherwise noted.

§ 668.51 General.

(a) *Scope and purpose*. The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance under the subsidized student financial assistance programs.

(b) *Applicant responsibility*. If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant must provide the specified documents or information.

(c) *Foreign schools*. The Secretary exempts from the provisions of this subpart participating institutions that are not located in a State.

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

§ 668.52 Definitions.

The following definitions apply to this subpart:

Specified year: (1) The calendar year preceding the first calendar year of an award year, *i.e.*, the base year; or

(2) The year preceding the year described in paragraph (1) of this definition.

Subsidized student financial assistance programs: Title IV, HEA programs for which eligibility is determined on the basis of an applicant's EFC. These programs include the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work-Study (FWS), Federal Perkins Loan, and Direct Subsidized Loan programs.

Unsubsidized student financial assistance programs: Title IV, HEA programs for which eligibility is not based on an applicant's EFC. These programs include the Teacher Education Assistance for College and Higher Education (TEACH) Grant, Direct Unsubsidized Loan, and Direct PLUS Loan programs.

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

§ 668.53 Policies and procedures.

(a) An institution must establish and use written policies and procedures for verifying an applicant's FAFSA information in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant must provide any documentation requested by the institution in accordance with § 668.57;

(2) The consequences of an applicant's failure to provide the requested documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of its verification if, as a result of verification, the applicant's EFC changes and results in a change in the amount of the applicant's assistance under the title IV, HEA programs;

(4) The procedures the institution will follow itself or the procedures the institution will require an applicant to follow to correct FAFSA information determined to be in error; and

(5) The procedures for making referrals under § 668.16(g).

(b) An institution's procedures must provide that it will furnish, in a timely manner, to each applicant whose FAFSA information is selected for verification a clear explanation of—

(1) The documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of FAFSA information, including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(c) An institution's procedures must provide that an applicant whose FAFSA information is selected for verification is required to complete verification before the institution exercises any authority under section 479A(a) of the HEA to make changes to the applicant's cost of attendance or to the values of the data items required to calculate the EFC.

Approved by the Office of Management and Budget under control number 1845–0041)

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

§ 668.54 Selection of an applicant's FAFSA information for verification.

(a) *General requirements.* (1) Except as provided in paragraph (b) of this section, an institution must require an applicant whose FAFSA information is selected for verification by the Secretary, to verify the information specified by the Secretary pursuant to § 668.56.

(2) If an institution has reason to believe that an applicant's FAFSA information is inaccurate, it must verify the accuracy of that information.

(3) An institution may require an applicant to verify any FAFSA information that it specifies.

(4) If an applicant is selected to verify FAFSA information under paragraph (a)(1) of this section, the institution must require the applicant to verify the information as specified in § 668.56 if the applicant is selected for a subsequent verification of FAFSA information, except that the applicant is not required to provide documentation for the FAFSA information previously verified for the applicable award year to the extent that the FAFSA information previously verified remains unchanged.

(b) *Exclusions from verification.* (1) An institution need not verify an applicant's FAFSA information if—

(i) The applicant dies;

(ii) The applicant does not receive assistance under the title IV, HEA programs for reasons other than failure to verify FAFSA information;

(iii) The applicant is eligible to receive only unsubsidized student financial assistance; or

(iv) The applicant who transfers to the institution, had previously completed verification at the institution from which he or she transferred, and applies for assistance based on the same FAFSA information used at the previous institution, if the current institution obtains a letter from the previous institution—

(A) Stating that it has verified the applicant's information; and

(B) Providing the transaction number of the applicable valid ISIR.

(2) Unless the institution has reason to believe that the information reported by a dependent student is incorrect, it need not verify the applicant's parents' FAFSA information if—

(i) The parents are residing in a country other than the United States and cannot be contacted by normal means of communication;

(ii) The parents cannot be located because their contact information is unknown and cannot be obtained by the applicant; or

(iii) Both of the applicant's parents are mentally incapacitated.

(3) Unless the institution has reason to believe that the information reported by an independent student is incorrect, it need not verify the applicant's spouse's information if—

(i) The spouse is deceased;

(ii) The spouse is mentally incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her contact information is unknown and cannot be obtained by the applicant.

Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1091, 1094)

§ 668.55 Updating information.

(a) If an applicant's dependency status changes at any time during the award year, the applicant must update FAFSA information, except when the update is due to a change in his or her marital status.

(b)(1) An applicant who is selected for verification of the number of persons in his or her household (household size) or the number of those in the household who are attending postsecondary institutions (number in college) must update those items to be correct as of the date of verification, except when the update is due to a change in his or her marital status.

(2) Notwithstanding paragraph (b)(1) of this section, an applicant is not required to provide documentation of household size or number in college during a subsequent verification of either item if the information has not changed.

(c) An institution may require an applicant to update FAFSA information

under paragraph (a) or (b) of this section for a change in the applicant's marital status if the institution determines the update is necessary to address an inequity or to reflect more accurately the applicant's ability to pay.

Approved by the Office of Management and Budget under control number 1845–0041)

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

§ 668.56 Information to be verified.

(a) For each award year the Secretary publishes in the FEDERAL REGISTER notice the FAFSA information that an institution and an applicant may be required to verify.

(b) For each applicant whose FAFSA information is selected for verification by the Secretary, the Secretary specifies the specific information under paragraph (a) of this section that the applicant must verify.

Approved by the Office of Management and Budget under control number 1845–0041)

(Authority: 20 U.S.C. 1094, 1095)

§ 668.57 Acceptable documentation.

If an applicant is selected to verify any of the following information, an institution must obtain the specified documentation.

(a) *Adjusted Gross Income (AGI), income earned from work, or U.S. income tax paid.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution must require an applicant selected for verification of AGI, income earned from work or U.S. income tax paid to submit to it—

(i) A copy of the income tax return or an Internal Revenue Service (IRS) form that lists tax account information of the applicant, his or her spouse, or his or her parents, as applicable for the specified year. The copy of the return must include the signature (which need not be an original) of the filer of the return or of one of the filers of a joint return;

(ii) For a dependent student, a copy of each IRS Form W–2 for the specified year received by the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W–2 for the specified year he or she received if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) An institution may accept, in lieu of an income tax return or an IRS form that lists tax account information, the information reported for an item on the applicant's FAFSA for the specified year if the Secretary has identified that item as having been obtained from the IRS and not having been changed.

(3) An institution must accept, in lieu of an income tax return or an IRS form that lists tax account information, the documentation set forth in paragraph (a)(4) of this section if the individual for the specified year—

(i) Has not filed and, under IRS rules, or other applicable government agency rules, is not required to file an income tax return;

(ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

(iii) Has requested a copy of the tax return or an IRS form that lists tax account information, and the IRS or a government of a U.S. territory or commonwealth or a foreign central government cannot locate the return or provide an IRS form that lists tax account information.

(4) An institution must accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a statement signed by that individual certifying that he or she has not filed and is not required to file an income tax return for the specified year and certifying for that year that individual's—

(A) Sources of income earned from work as stated on the FAFSA; and

(B) Amounts of income from each source. In lieu of a certification of these amounts of income, the applicant may provide a copy of his or her IRS Form W–2 for each source listed under paragraph (a)(4)(i)(A) of this section;

(ii) For an individual described in paragraph (a)(3)(ii) of this section—

(A) A copy of the IRS Form 4868, ''Application for Automatic Extension of Time to File U.S. Individual Income Tax Return,'' that the individual filed with the IRS for the specified year, or a copy of the IRS's approval of an extension beyond the automatic six-month extension if the individual requested an additional extension of the filing time; and

(B) A copy of each IRS Form W–2 that the individual received for the specified year, or for a self-employed individual, a statement signed by the individual certifying the amount of the AGI for the specified year; and

(iii) For an individual described in paragraph (a)(3)(iii) of this section—

(A) A copy of each IRS Form W–2 that the individual received for the specified year; or

(B) For an individual who is self-employed or has filed an income tax return with a government of a U. S. territory or commonwealth, or a foreign central government, a statement signed by the individual certifying the amount of AGI and taxes paid for the specified year.

(5) An institution may require an individual described in paragraph (a)(3)(ii) of this section to provide to it a copy of his or her completed and signed income tax return when filed. If an institution receives the copy of the return, it must reverify the AGI and taxes paid by the applicant and his or her spouse or parents.

(6) If an individual who is required to submit an IRS Form W–2, under paragraph (a) of this section, is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work, the source of that income, and the reason that the IRS Form W–2 is not available in a timely manner.

(7) For the purpose of this section, an institution may accept in lieu of a copy of an income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that includes the preparer's Social Security Number, Employer Identification Number or the Preparer Tax Identification Number and has been signed, stamped, typed, or printed with the name and address of the preparer of the return.

(b) *Number of family members in household.* An institution must require an applicant selected for verification of the number of family members in the household to submit to it a statement signed by both the applicant and one of the applicant's parents if the applicant is a dependent student, or only the applicant if the applicant is an independent student, listing the name and age of each family member in the household and the relationship of that household member to the applicant.

(c) *Number of family household members enrolled in eligible postsecondary institutions.* (1) An institution must require an applicant selected for verification of the number of household members in the applicant's family enrolled on at least a half-time basis in eligible postsecondary institutions to submit a statement signed by both the applicant and one of the applicant's parents, if the applicant is a dependent student, or by only the applicant if the applicant is an independent student, listing—

(i) The name of each family member who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of the institution that each student is or will be attending.

(2) If the institution has reason to believe that an applicant's FAFSA information or the statement provided under paragraph (c)(1) of this section regarding the number of family household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain a statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless—

(i) The institution the student is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend; or

(ii) The institution has information indicating that the student will be attending the same institution as the applicant.

(d) *Other information*. If an applicant is selected to verify other information specified in the annual FEDERAL REGISTER notice, the applicant must provide the documentation specified for that information in the FEDERAL REGISTER notice.

Approved by the Office of Management and Budget under control number 1845–0041)

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

§ 668.58 Interim disbursements.

(a)(1) If an institution has reason to believe that an applicant's FAFSA information is inaccurate, until the information is verified and any corrections are made in accordance with § 668.59(a), the institution may not—

(i) Disburse any Federal Pell Grant, FSEOG, or Federal Perkins Loan Program funds to the applicant;

(ii) Employ or allow an employer to employ the applicant in its FWS Program; or

(iii) Originate a Direct Subsidized Loan, or disburse any such loan proceeds for any previously originated Direct Subsidized Loan to the applicant.

(2) If an institution does not have reason to believe that an applicant's FAFSA information is inaccurate prior to verification, the institution may—

(i)(A) Withhold payment of Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant; or

(B) Make one disbursement from each of the Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant's first payment period of the award year;

(ii) Employ or allow an employer to employ that applicant, once he or she is an eligible student, under the FWS Program for the first 60 consecutive days after the student's enrollment in that award year; or

(iii)(A) Withhold origination of the applicant's Direct Subsidized Loan; or

(B) Originate the Direct Subsidized Loan provided that the institution does not disburse Direct Subsidized Loan proceeds.

(3) If, after verification, an institution determines that changes to an applicant's information will not change the amount the applicant would receive under a title IV, HEA program, the institution—

(i) Must ensure corrections are made in accordance with § 668.59(a); and

(ii) May prior to receiving the corrected valid SAR or valid ISIR—

(A) Make one disbursement from each of the Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds for the applicant's first payment period of the award year;

(B) Employ or allow an employer to employ the applicant, once he or she is an eligible student, under the FWS Program for the first 60 consecutive days after the student's enrollment in that award year; or

(C) Originate the Direct Subsidized Loan and disburse the Direct Subsidized Loan proceeds for the applicant.

(b) If an institution chooses to make a disbursement under—

(1) Paragraph (a)(2)(i)(B) of this section, it—

(i) Is liable for any overpayment discovered as a result of verification to the extent that the overpayment is not recovered through reducing subsequent disbursements in the award year or from the student; and

(ii) Must recover the overpayment in accordance with § 668.61(a);

(2) Paragraph (a)(2)(ii) of this section, it—

(i) Is liable for any overpayment discovered as a result of verification to the extent that the overpayment is not eliminated by adjusting other financial assistance; and

(ii) Must recover the overpayment in accordance with § 668.61(b); or

(3) Paragraph (a)(3) of this section, it—

(i) Is liable for any subsidized student financial assistance disbursed if it does not receive the valid SAR or valid ISIR reflecting corrections within the deadlines established under § 668.60; and

(ii) Must recover the funds in accordance with § 668.61(c).

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

[75 FR 66954, Oct. 29, 2010, as amended at 77 FR 20536, Apr. 13, 2012]

§ 668.59 Consequences of a change in an applicant's FAFSA information.

(a) For the subsidized student financial assistance programs, if an applicant's FAFSA information changes as a result of verification, the applicant or the institution must submit to the Secretary any changes to—

(1) A nondollar item; or

(2) A single dollar item of $25 or more.

(b) For the Federal Pell Grant Program, if an applicant's FAFSA information changes as a result of verification, an institution must—

(1) Recalculate the applicant's Federal Pell Grant on the basis of the EFC on the corrected valid SAR or valid ISIR; and

(2)(i) Disburse any additional funds under that award only if the institution receives a corrected valid SAR or valid ISIR for the applicant and only to the extent that additional funds are payable based on the recalculation;

(ii) Comply with the procedures specified in § 668.61 for an interim disbursement if, as a result of verification, the Federal Pell Grant award is reduced; or—

(iii) Comply with the procedures specified in 34 CFR 690.79 for an overpayment that is not an interim disbursement if, as a result of verification, the Federal Pell Grant award is reduced.

(c) For the subsidized student financial assistance programs, excluding the Federal Pell Grant Program, if an applicant's FAFSA information changes as a result of verification, the institution must—

(1) Adjust the applicant's financial aid package on the basis of the EFC on the corrected valid SAR or valid ISIR; and

(2)(i) Comply with the procedures specified in § 668.61 for an interim disbursement if, as a result of verification, the financial aid package must be reduced;

(ii) Comply with the procedures specified in 34 CFR 673.5(f) for a Federal Perkins loan or an FSEOG overpayment that is not the result of an interim disbursement if, as a result of verification, the financial aid package must be reduced; and

(iii) Comply with the procedures specified in 34 CFR 685.303(e) for Direct Subsidized Loan excess loan proceeds that are not the result of an interim disbursement if, as a result of verification, the financial aid package must be reduced.

Approved by the Office of Management and Budget under control number 1845–0041)

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

§ 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

(a) An institution must require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documentation set forth in § 668.57 that is requested by the institution.

(b) For purposes of the subsidized student financial assistance programs, excluding the Federal Pell Grant Program—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution—

(i) The institution may not—

(A) Disburse any additional Federal Perkins Loan or FSEOG Program funds to the applicant;

(B) Employ, continue to employ or allow an employer to employ the applicant under FWS; or

(C) Originate the applicant's Direct Subsidized Loan or disburse any additional Direct Subsidized Loan proceeds for the applicant; and

(ii) The applicant must repay to the institution any Federal Perkins Loan or FSEOG received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, disburse aid to the applicant notwithstanding paragraph (b)(1) of this section; and

(3) If an institution has received proceeds for a Direct Subsidized Loan on behalf of an applicant, the institution must return all or a portion of those funds as provided under § 668.166(b) if the applicant does not complete verification within the time period specified.

(c) For purposes of the Federal Pell Grant Program—

(1) An applicant may submit a valid SAR to the institution or the institution may receive a valid ISIR after the applicable deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication of a notice in the FEDERAL REGISTER; and

(2) If the applicant does not provide to the institution the requested documentation and, if necessary, a valid SAR or the institution does not receive a valid ISIR, within the additional time period referenced in paragraph (c)(1) of this section, the applicant—

(i) Forfeits the Federal Pell Grant for the award year; and

(ii) Must return any Federal Pell Grant payments previously received for that award year.

(d) The Secretary may determine not to process FAFSA information of an applicant who has been requested to provide documentation until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies before the deadline for completing verification without completing that process, the institution may not—

(1) Make any further disbursements on behalf of that applicant;

(2) Originate that applicant's Direct Subsidized Loan, or disburse that applicant's Direct Subsidized Loan proceeds; or

(3) Consider any funds it disbursed to that applicant under § 668.58(a)(2) as an overpayment.

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

§ 668.61 Recovery of funds from interim disbursements.

(a) If an institution discovers, as a result of verification, that an applicant received under § 668.58(a)(2)(i)(B) more financial aid than the applicant was eligible to receive, the institution must eliminate the Federal Pell Grant, Federal Perkins Loan, or FSEOG overpayment by—

(1) Adjusting subsequent disbursements in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) Making restitution from its own funds, by the earlier of the following dates, if the applicant does not return the overpayment:

(A) Sixty days after the applicant's last day of attendance.

(B) The last day of the award year in which the institution disbursed Federal Pell Grant, Federal Perkins Loan, or FSEOG Program funds to the applicant.

(b) If an institution discovers, as a result of verification, that an applicant received under § 668.58(a)(2)(ii) more financial aid than the applicant was eligible to receive, the institution must eliminate the FWS overpayment by—

(1) Adjusting the applicant's other financial aid; or

(2) Reimbursing the FWS program account by making restitution from its own funds, if the institution cannot correct the overpayment under paragraph (b)(1) of this section. The applicant must still be paid for all work performed under the institution's own payroll account.

(c) If an institution disbursed subsidized student financial assistance to an applicant under § 668.58(a)(3), and did not receive the valid SAR or valid ISIR reflecting corrections within the deadlines established under § 668.60, the institution must reimburse the appropriate program account by making restitution from its own funds. The applicant must still be paid for all work performed under the institution's own payroll account.

Approved by the Office of Management and Budget under control number 1845–0041)

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

Subpart F—Misrepresentation

SOURCE: 75 FR 66958, Oct. 29, 2010, unless otherwise noted.

§ 668.71 Scope and special definitions.

(a) If the Secretary determines that an eligible institution has engaged in

substantial misrepresentation, the Secretary may—

(1) Revoke the eligible institution's program participation agreement, if the institution is provisionally certified under § 668.13(c);

(2) Impose limitations on the institution's participation in the title IV, HEA programs, if the institution is provisionally certified under § 668.13(c) ;

(3) Deny participation applications made on behalf of the institution; or

(4) Initiate a proceeding against the eligible institution under subpart G of this part.

(b) This subpart establishes the types of activities that constitute substantial misrepresentation by an eligible institution. An eligible institution is deemed to have engaged in substantial misrepresentation when the institution itself, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, marketing, advertising, recruiting or admissions services, makes a substantial misrepresentation about the nature of its educational program, its financial charges, or the employability of its graduates. Substantial misrepresentations are prohibited in all forms, including those made in any advertising, promotional materials, or in the marketing or sale of courses or programs of instruction offered by the institution.

(c) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to mislead under the circumstances. A statement is any communication made in writing, visually, orally, or through other means. Misrepresentation includes any statement that omits information in such a way as to make the statement false, erroneous, or misleading. Misrepresentation includes the dissemination of a student endorsement or testimonial that a student gives either under duress or because the institution required the student to make such an endorsement or testimonial to participate in a program.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

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

[75 FR 66958, Oct. 29, 2010, as amended at 78 FR 57799, Sept. 20, 2013; 81 FR 76072, Nov. 1, 2016]

§ 668.72 Nature of educational program.

Misrepresentation concerning the nature of an eligible institution's educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its institutional, programmatic, or specialized accreditation;

(b)(1) Whether a student may transfer course credits earned at the institution to any other institution;

(2) Conditions under which the institution will accept transfer credits earned at another institution;

(c) Whether successful completion of a course of instruction qualifies a student—

(1) For acceptance to a labor union or similar organization; or

(2) To receive, to apply to take or to take the examination required to receive, a local, State, or Federal license, or a nongovernmental certification required as a precondition for employment, or to perform certain functions in the States in which the educational program is offered, or to meet additional conditions that the institution

knows or reasonably should know are generally needed to secure employment in a recognized occupation for which the program is represented to prepare students;

(d) The requirements for successfully completing the course of study or program and the circumstances that would constitute grounds for terminating the student's enrollment;

(e) Whether its courses are recommended or have been the subject of unsolicited testimonials or endorsements by—

(1) Vocational counselors, high schools, colleges, educational organizations, employment agencies, members of a particular industry, students, former students, or others; or

(2) Governmental officials for governmental employment;

(f) Its size, location, facilities, or equipment;

(g) The availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(h) The nature, age, and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(i) The number, availability, and qualifications, including the training and experience, of its faculty and other personnel;

(j) The availability of part-time employment or other forms of financial assistance;

(k) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course;

(l) The nature or extent of any prerequisites established for enrollment in any course;

(m) The subject matter, content of the course of study, or any other fact related to the degree, diploma, certificate of completion, or any similar document that the student is to be, or is, awarded upon completion of the course of study;

(n) Whether the academic, professional, or occupational degree that the institution will confer upon completion of the course of study has been authorized by the appropriate State educational agency. This type of misrepresentation includes, in the case of a degree that has not been authorized by the appropriate State educational agency or that requires specialized accreditation, any failure by an eligible institution to disclose these facts in any advertising or promotional materials that reference such degree; or

(o) Any matters required to be disclosed to prospective students under §§ 668.42 and 668.43 of this part.

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

§ 668.73 Nature of financial charges.

Misrepresentation concerning the nature of an eligible institution's financial charges includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge;

(b) Whether a particular charge is the customary charge at the institution for a course;

(c) The cost of the program and the institution's refund policy if the student does not complete the program;

(d) The availability or nature of any financial assistance offered to students, including a student's responsibility to repay any loans, regardless of whether the student is successful in completing the program and obtaining employment; or

(e) The student's right to reject any particular type of financial aid or other assistance, or whether the student must apply for a particular type of financial aid, such as financing offered by the institution.

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

§ 668.74 Employability of graduates.

Misrepresentation regarding the employability of an eligible institution's graduates includes, but is not limited to, false, erroneous, or misleading statements concerning—

(a) The institution's relationship with any organization, employment agency, or other agency providing authorized training leading directly to employment;

(b) The institution's plans to maintain a placement service for graduates or otherwise assist its graduates to obtain employment;

(c) The institution's knowledge about the current or likely future conditions, compensation, or employment opportunities in the industry or occupation for which the students are being prepared;

(d) Whether employment is being offered by the institution or that a talent hunt or contest is being conducted, including, but not limited to, through the use of phrases such as ''Men/women wanted to train for * * *,'' ''Help Wanted,'' ''Employment,'' or ''Business Opportunities'';

(e) Government job market statistics in relation to the potential placement of its graduates; or

(f) Other requirements that are generally needed to be employed in the fields for which the training is provided, such as requirements related to commercial driving licenses or permits to carry firearms, and failing to disclose factors that would prevent an applicant from qualifying for such requirements, such as prior criminal records or preexisting medical conditions.

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

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

SOURCE: 51 FR 43325, Dec. 1, 1986, unless otherwise noted.

§ 668.81 Scope and special definitions.

(a) This subpart establishes regulations for the following actions with respect to a participating institution or third-party servicer:

(1) An emergency action.

(2) The imposition of a fine.

(3) The limitation, suspension, or termination of the participation of the institution in a title IV, HEA program.

(4) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(5) The determination of—

(i) Borrower defense to repayment claims that are brought by the Department against an institution under § 685.206 or § 685.222; and

(ii) Liability of an institution to the Secretary for losses to the Secretary arising from these claims.

(b) This subpart applies to an institution or a third-party servicer that violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA.

(c) This subpart does not apply to a determination that—

(1) An institution or any of its locations or educational programs fails to qualify for initial designation as an eligible institution, location, or educational program because the institution, location, or educational program fails to satisfy the statutory and regulatory provisions that define an eligible institution or educational program with respect to the Title IV, HEA program for which a designation of eligibility is sought;

(2) An institution fails to qualify for initial certification or provisional certification to participate in any Title IV, HEA program because the institution does not meet the factors of financial responsibility and standards of administrative capability contained in subpart B of this part;

(3) A participating institution's or a provisionally certified participating institution's period of participation, as specified under § 668.13, has expired; or

(4) A participating institution's provisional certification is revoked under the procedures in § 668.13.

(d) This subpart does not apply to a determination by the Secretary of the system to be used to disburse Title IV, HEA program funds to a participating institution (i.e., advance payments and payments by way of reimbursements).

(e) The proceedings described in this subpart provide the institution's sole opportunity for a hearing on the existence and amount of the debt that is required by applicable law prior to the Department collecting the debt from any available funds, including but not

limited to offsetting the debt or any liability against funds to be provided to an institution pursuant to any Title IV, HEA program in which that institution participates.

(f) Nothing contained in this subpart limits the right of the Department to gather information, including by subpoena, or conduct any examination, audit, program review, investigation, or other review authorized by other applicable law.

(g) Unless directed by a court of competent jurisdiction, the hearing official, or the Secretary for good cause, if a collateral attack is brought in any court concerning all or any part of any proceeding under this subpart, the challenged proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to timely act as directed in a proceeding authorized by this subpart shall be excused based on the pendency of such court proceeding.

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

[51 FR 43325, Dec. 1, 1986, as amended at 55 FR 32183, Aug. 7, 1990; 58 FR 13344, Mar. 10, 1993; 59 FR 22443, Apr. 29, 1994; 59 FR 61186, Nov. 29, 1994; 63 FR 40626, July 29, 1998; 82 FR 6256, Jan. 19, 2017]

§ 668.82 Standard of conduct.

(a) A participating institution or a third-party servicer that contracts with that institution acts in the nature of a fiduciary in the administration of the Title IV, HEA programs. To participate in any Title IV, HEA program, the institution or servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary.

(b) In the capacity of a fiduciary—

(1) A participating institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs; and

(2) A third-party servicer is subject to the highest standard of care and diligence in administering any aspect of the programs on behalf of the institutions with which the servicer contracts and in accounting to the Secretary and those institutions for any funds administered by the servicer under those programs.

(c) The failure of a participating institution or any of the institution's third-party servicers to administer a Title IV, HEA program, or to account for the funds that the institution or servicer receives under that program, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for—

(1) An emergency action against the institution, a fine on the institution, or the limitation, suspension, or termination of the institution's participation in that program; or

(2) An emergency action against the servicer, a fine on the servicer, or the limitation, suspension, or termination of the servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in that program.

(d)(1) A participating institution or a third-party servicer with which the institution contracts violates its fiduciary duty if—

(i)(A) The servicer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(B) A person who exercises substantial control over the servicer, as determined according to § 668.15, has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(C) The servicer employs a person in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or who has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or

(D) The servicer uses or contracts in a capacity that involves any aspect of the administration of the Title IV, HEA programs with any other person, agency, or organization that has been or whose officers or employees have been—

(*1*) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(*2*) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; and

(ii) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1)(i) of this section, the institution or servicer, as applicable, does not promptly remove the person, agency, or organization from any involvement in the administration of the institution's participation in Title IV, HEA programs, or, as applicable, the removal or elimination of any substantial control, as determined according to § 668.15, over the servicer.

(2) A violation for a reason contained in paragraph (d)(1) of this section is grounds for terminating—

(i) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program; and

(ii) The participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution had been aware of the violation and had failed to take the appropriate action described in paragraph (d)(1)(ii) of this section.

(e)(1) A participating institution or third-party servicer, as applicable, violates its fiduciary duty if—

(i)(A) The institution or servicer, as applicable, is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Cause exists under 2 CFR 180.700 or 180.800, as both those sections are adopted at 2 CFR 3485.12, for debarring or suspending the institution, servicer, or any principal or affiliate of the institution or servicer under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4; and

(ii) Upon learning of the debarment, suspension, or cause for debarment or suspension, the institution or servicer, as applicable, does not promptly—

(A) Discontinue the affiliation; or

(B) Remove the principal from responsibility for any aspect of the administration of an institution's or servicer's participation in the Title IV, HEA programs.

(2) A violation for a reason contained in paragraph (e)(1) of this section is grounds for terminating—

(i) The institution's participation in any Title IV, HEA program; and

(ii) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program. The violation is also grounds for terminating, under this subpart, the participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution knew or should have known of the violation.

(f)(1) The debarment of a participating institution or third-party servicer, as applicable, under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, or another Federal agency from participation in Federal programs, under the procedures described in 2 CFR 3485.612(d) terminates, for the duration of the debarment—

(i) The institution's participation in any Title IV, HEA program; and

(ii) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program.

(2)(i) The suspension of a participating institution or third-party servicer, as applicable, under E.O. 12549 (3 CFR, 1986 Comp., p. 189) or the FAR, 48 CFR part 9, subpart 9.4, or another Federal agency from participation in Federal programs, under the procedures described in 2 CFR 3485.612(d), suspends—

(A) The institution's participation in any Title IV, HEA program; and

(B) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program.

(ii) A suspension described in paragraph (f)(2) of this section lasts for a period of 60 days, beginning on the effective date specified in the notice by the Secretary under 2 CFR 3485.612(c), unless—

(A) The institution or servicer, as applicable, and the Secretary, agree to an extension of the suspension; or

(B) The Secretary begins a limitation or termination proceeding against the institution or servicer, as applicable, under this subpart before the 60th day of the suspension.

(3) A debarment or suspension not described in (f)(1) or (f)(2) of this section of a participating institution or third-party servicer by another Federal agency constitutes prima facie evidence in a proceeding under this subpart that cause for suspension or debarment and termination, as applicable, exists.

(Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189), E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1070, *et seq.*, 1082(a)(1) and (h)(1), 1094(c)(1)(D) and (H), and 3474)

[59 FR 22444, Apr. 29, 1994, as amended at 60 FR 33058, June 26, 1995; 68 FR 66615, Nov. 26, 2003; 77 FR 18679, Mar. 28, 2012]

§ 668.83 Emergency action.

(a) Under an emergency action, the Secretary may—

(1) Withhold Title IV, HEA program funds from a participating institution or its students, or from a third-party servicer, as applicable;

(2)(i) Withdraw the authority of the institution or servicer, as applicable, to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds; or

(ii) Withdraw the authority of the institution or servicer, as applicable, to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds except in accordance with a particular procedure; and

(3)(i) Withdraw the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program; or

(ii) Withdraw the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program except in accordance with a particular procedure.

(b)(1) An initiating official begins an emergency action against an institution or third-party servicer by sending the institution or servicer a notice by registered mail, return receipt requested. In an emergency action against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The official also may transmit the notice by other, more expeditious means if practical.

(2) The emergency action takes effect on the date the initiating official mails the notice to the institution or servicer, as applicable.

(3) The notice states the grounds on which the emergency action is based, the consequences of the emergency action, and that the institution or servicer, as applicable, may request an opportunity to show cause why the emergency action is unwarranted.

(c)(1) An initiating official takes emergency action against an institution or third-party servicer only if that official—

(i) Receives information, determined by the official to be reliable, that the institution or servicer, as applicable, is violating any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;

(ii) Determines that immediate action is necessary to prevent misuse of Title IV, HEA program funds; and

(iii) Determines that the likelihood of loss from that misuse outweighs the importance of awaiting completion of any proceeding that may be initiated to limit, suspend, or terminate, as applicable—

(A) The participation of the institution in one or more Title IV, HEA programs; or

(B) The eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(2) Examples of violations of a Title IV, HEA program requirement that cause misuse and the likely loss of Title IV, HEA program funds include—

(i) Causing the commitment, disbursement, or delivery by any party of Title IV, HEA program funds in an amount that exceeds—

(A) The amount for which students are eligible; or

(B) The amount of principal, interest, or special allowance payments that would have been payable to the holder of a Federal Stafford or Federal PLUS loan if a refund allocable to that loan had been made in the amount and at the time required;

(ii) Using, offering to make available, or causing the use or availability of Title IV, HEA program funds for educational services if—

(A) The institution, servicer, or agents of the institution or servicer have made a substantial misrepresentation as described in §§ 668.72, 668.73, or 668.74 related to those services;

(B) The institution lacks the administrative or financial ability to provide those services in full; or

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

(iii) Engaging in fraud involving the administration of a Title IV, HEA program. Examples of fraud include—

(A) Falsification of any document received from a student or pertaining to a student's eligibility for assistance under a Title IV, HEA program;

(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Secretary;

(C) Falsification, including false certifications, of any document used for or pertaining to—

(*1*) The legal authority of an institution to provide postsecondary education in the State in which the institution is located; or

(*2*) The accreditation or preaccreditation of an institution or any of the institution's educational programs or locations;

(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan or Federal PLUS programs or an independent auditor;

(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution's participation in a Title IV, HEA program; and

(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations.

(3) If the Secretary begins an emergency action against a third-party servicer, the Secretary may also begin an emergency action against any institution under whose contract a third-party servicer commits the violation.

(d)(1) Except as provided in paragraph (d)(2) of this section, after an emergency action becomes effective, an institution or third-party servicer, as applicable, may not—

(i) Make or increase awards or make other commitments of aid to a student under the applicable Title IV, HEA program;

(ii) Disburse either program funds, institutional funds, or other funds as assistance to a student under that Title IV, HEA program;

(iii) In the case of an emergency action pertaining to participation in the Federal Stafford Loan or Federal PLUS programs—

(A) Certify an application for a loan under that program;

(B) Deliver loan proceeds to a student under that program; or

(C) Retain the proceeds of a loan made under that program that are received after the emergency action takes effect; or

(iv) In the case of an emergency action against a third-party servicer, administer any aspect of any institution's participation in any Title IV, HEA program.

(2) If the initiating official withdraws, by an emergency action, the authority of the institution or servicer to commit, disburse, deliver, or cause the

commitment, disbursement, or delivery of Title IV, HEA program funds, or the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program, except in accordance with a particular procedure specified in the notice of emergency action, the institution or servicer, as applicable, may not take any action described in paragraph (d)(1) of this section except in accordance with the procedure specified in the notice.

(e)(1) Upon request by the institution or servicer, as applicable, the Secretary provides the institution or servicer, as soon as practicable, with an opportunity to show cause that the emergency action is unwarranted or should be modified.

(2) An opportunity to show cause consists of an opportunity to present evidence and argument to a show-cause official. The initiating official does not act as the show-cause official for any emergency action that the initiating official has begun. The show-cause official is authorized to grant relief from the emergency action. The institution or servicer may make its presentation in writing or, upon its request, at an informal meeting with the show-cause official.

(3) The show-cause official may limit the time and manner in which argument and evidence may be presented in order to avoid unnecessary delay or the presentation of immaterial, irrelevant, or repetitious matter.

(4) The institution or servicer, as applicable, has the burden of persuading the show-cause official that the emergency action imposed by the notice is unwarranted or should be modified because—

(i) The grounds stated in the notice did not, or no longer, exist;

(ii) The grounds stated in the notice will not cause loss or misuse of Title IV, HEA program funds; or

(iii) The institution or servicer, as applicable, will use procedures that will reliably eliminate the risk of loss from the misuse described in the notice.

(5) The show-cause official continues, modifies, or revokes the emergency action promptly after consideration of any argument and evidence presented by the institution or servicer, as applicable, and the initiating official.

(6) The show-cause official notifies the institution or servicer, as applicable, of that official's determination promptly after the completion of the show-cause meeting or, if no meeting is requested, after the official receives all the material submitted by the institution in opposition to the emergency action. In the case of a notice to a third-party servicer, the official also notifies each institution that contracts with the servicer of that determination. The show-cause official may explain that determination by adopting or modifying the statement of reasons provided in the notice of emergency action.

(f)(1) An emergency action does not extend more than 30 days after initiated unless the Secretary initiates a limitation, suspension, or termination proceeding under this part or under 34 CFR part 600 against the institution or servicer, as applicable, within that 30-day period, in which case the emergency action continues until a final decision is issued in that proceeding, as provided in § 668.91(c), as applicable.

(2) Until a final decision is issued by the Secretary in a proceeding described in paragraph (f)(1) of this section, any action affecting the emergency action is at the sole discretion of the initiating official, or, if a show- cause proceeding is conducted, the show-cause official.

(3) If an emergency action extends beyond 180 days by virtue of paragraph (f)(1) of this section, the institution or servicer, as applicable, may then submit written material to the show-cause official to demonstrate that because of facts occurring after the later of the notice by the initiating official or the show-cause meeting, continuation of the emergency action is unwarranted and the emergency action should be modified or ended. The show-cause official considers any written material submitted and issues a determination that continues, modifies, or revokes the emergency action.

(g) The expiration of an emergency action, or its modification or revocation by the show-cause official, does not bar subsequent emergency action on a ground other than one specifically

identified in the notice imposing the prior emergency action. Separate grounds may include violation of an agreement or limitation imposed or resulting from the prior emergency action.

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

[59 FR 22445, Apr. 29, 1994, as amended at 60 FR 34432, June 30, 1995; 63 FR 40626, July 29, 1998; 64 FR 59042, Nov. 1, 1999; 82 FR 6257, Jan. 19, 2017]

§ 668.84 Fine proceedings.

(a) *Scope and consequences.* (1) The Secretary may impose a fine of up to $57,317[1] per violation on a participating institution or third-party servicer that—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a fine proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(b) *Procedures.* (1) A designated department official begins a fine proceeding by sending the institution or servicer, as applicable, a notice by certified mail, return receipt requested. In the case of a fine proceeding against a third-party servicer, the official also sends the notice to each institution that is affected by the alleged violations identified as the basis for the fine action, and, to the extent possible, to each institution that contracts with the servicer for the same service affected by the violation. This notice—

(i) Informs the institution or servicer of the Secretary's intent to fine the institution or servicer, as applicable, and the amount of the fine and identifies the alleged violations that constitute the basis for the action;

(ii) Specifies the proposed effective date of the fine, which is at least 20 days from mailing of the notice of intent;

(iii) Informs the institution or servicer that the fine will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a written request for a hearing or written material indicating why the fine should not be imposed; and

(iv) In the case of a fine proceeding against a third-party servicer, informs each institution that is affected by the alleged violations of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution affected by the alleged violations that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official transmits the request for hearing and response to the Office of Hearings and Appeals, which sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) A hearing official conducts a hearing in accordance with § 668.89.

(c) *Expedited proceedings.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer,

[1] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note).

any time schedule specified in this section may be shortened.

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

[59 FR 22446, Apr. 29, 1994, as amended at 67 FR 69655, Nov. 18, 2002; 82 FR 6257, Jan. 19, 2017; 83 FR 2065, Jan. 15, 2018; 84 FR 974, Feb. 1, 2019]

§ 668.85 Suspension proceedings.

(a) *Scope and consequences.* (1) The Secretary may suspend an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the institution or servicer—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a suspension proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The suspension may not exceed 60 days unless—

(i) The institution or servicer and the Secretary agree to an extension if the institution or servicer, as applicable, has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under § 668.86.

(b) *Procedures.* (1) A designated department official begins a suspension proceeding by sending a notice to an institution or third-party servicer by certified mail, return receipt requested. In the case of a suspension proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. The notice—

(i) Informs the institution or servicer of the intent of the Secretary to suspend the institution's participation or the servicer's eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the institution or servicer that the suspension will not be effective on the date specified in the notice, except as provided in § 668.91(b)(2), if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the suspension should not take place; and

(iv) In the case of a suspension proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official transmits the request for hearing and response to the Office of Hearings and Appeals, which sets the date and the place. The date is at least 15 days after the designated department official receives the request. The suspension does not take place until the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.89.

(c) *Expedited proceedings*. With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time period specified in this section may be shortened.

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

[59 FR 22447, Apr. 29, 1994, as amended at 60 FR 61773, Dec. 1, 1995; 65 FR 65637, Nov. 1, 2000; 82 FR 6257, Jan. 19, 2017]

§ 668.86 Limitation or termination proceedings.

(a) *Scope and consequences*. (1) The Secretary may limit or terminate an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the institution or servicer—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a limitation or termination proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The consequences of the limitation or termination of the institution's participation or the servicer's eligibility are described in §§ 668.94 and 668.95, respectively.

(b) *Procedures*. (1) A designated department official begins a limitation or termination proceeding by sending an institution or third-party servicer a notice by certified mail, return receipt requested. In the case of a limitation or termination proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. This notice—

(i) Informs the institution or servicer of the intent of the Secretary to limit or terminate the institution's participation or servicer's eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action, and, in the case of a limitation proceeding, states the limits to be imposed;

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the institution or servicer that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the limitation or termination should not take place; and

(iv) In the case of a limitation or termination proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official transmits the request for hearing and

response to the Office of Hearings and Appeals, which sets the date and place. The date is at least 15 days after the designated department official receives the request. The limitation or termination does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.89.

(c) *Expedited proceeding*. With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time schedule specified in this section may be shortened.

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

[59 FR 22447, Apr. 29, 1994, as amended at 60 FR 61774, Dec. 1, 1995; 65 FR 65637, Nov. 1, 2000; 82 FR 6257, Jan. 19, 2017]

§ 668.87 Borrower defense and recovery proceedings.

(a) *Procedures*. (1) A designated department official begins a borrower defense and recovery proceeding against an institution by sending the institution a notice by certified mail, return receipt requested. This notice—

(i) Informs the institution of the Secretary's intent—

(A) To determine the validity of borrower defense claims on behalf of a group under § 685.222(h), to demonstrate the validity of borrower defense claims already approved, or both, as applicable; and

(B) To recover from the institution by offset, by claim on a letter of credit or other protection provided by the institution, or otherwise, for losses on account of borrower defense claims asserted on behalf of the group and borrower defense claims already approved, as applicable;

(ii) Includes a statement of facts and law sufficient to show that the Department is entitled to grant any borrower defense relief asserted within the statement, and recover for the amount of losses to the Secretary caused by the granting of such relief;

(iii) Specifies the date on which the Secretary intends to take action to recover the amount of losses arising from the granting of such relief, which date will be at least 20 days from mailing of the notice of intent and informs the institution that the Secretary will not take action to recover the amount of such loss on the date specified if the designated department official receives, by that date, a written response from the institution indicating why the Secretary should not recover. The notice shall also inform the institution that if it wishes to request a hearing pursuant to this subpart, the institution must include such a request with its written response; and

(iv) Informs the institution whether the designated Department official intends to proceed with—

(A) A single action; or

(B) An action in two phases—

(*1*) The determination whether the institution's act or omission gave rise to valid borrower defense claims; and

(*2*) The determination of the amount of borrower defense relief.

(2) Although the hearing official shall have the discretion to bifurcate proceedings with, or without, a motion of either party, any decision by the designated department official to bifurcate the proceeding in accordance with paragraph (a)(1)(iv)(B) of this section may only be modified on motion with good cause shown.

(3) A hearing official conducts a hearing in accordance with § 668.89.

(b) *Effect of a response by the institution*. (1) If the institution submits a written response, but does not therein request a hearing, the designated department official, after considering that material, notifies the institution whether the Secretary will take the proposed recovery action for borrower defense claims and, if so, the date of such action and the amount of losses.

(2) If the institution submits a response and requests a hearing by the time specified in the notice under paragraph (a)(1)(iii) of this section, the designated department official may, in that official's sole discretion, withdraw the notice or transmit the response and request for hearing to the Office of Hearings and Appeals, which sets the date and the place for the hearing. The date of the hearing is at least 15 days after the designated department official receives the request. No liability shall be imposed on the institution prior to the hearing.

(c) *Limitations on participation*. The parties in any borrower defense and recovery proceeding are the Department

and the institution(s) against which the Department seeks to recover losses caused to the Department as a result of borrower defense relief. Borrowers are not permitted to intervene or appear in this proceeding, either on their own behalf or on behalf of any purported group, except as witnesses put forth by either party. However, nothing in this section limits the rights available to borrowers under other regulations, including 34 CFR 685.206 and 685.222.

(d) *Effect on the borrower*. No proceeding under this subpart imposes liability on any borrower who has already obtained a discharge in an individual proceeding under 34 CFR 685.206(c) or 34 CFR 685.222(e). A borrower defense and recovery proceeding may determine whether and how much relief is due to, and whether and how much of a loan remains owing by, a borrower participating in a group process proceeding as defined in 34 CFR 685.222(f) through (h).

(Authority: 20 U.S.C. 1087a *et seq.*, 1094)

[82 FR 6257, Jan. 19, 2017]

§ 668.88 Prehearing conference and motion practice.

(a) A hearing official may convene a prehearing conference if he or she thinks that the conference would be useful, or if the conference is requested by—

(1) The designated department official who brought a proceeding against an institution or third-party servicer under this subpart; or

(2) The institution or servicer, as applicable.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute.

(c) If the hearing official, the designated department official, and the institution, or servicer, as applicable, agree, a prehearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(d) A non-dispositive motion shall be made, if at all, consistent with any procedures set forth by the hearing official. In the absence of such procedures, non-dispositive motions shall be permitted, and responses to such motions shall be permitted though not required.

(e)(1) A party may make a motion for summary disposition asserting that the undisputed facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition establish that—

(i) There is no genuine issue as to any material fact; and

(ii) The moving party is entitled to a decision in its favor as a matter of law.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by evidence that the moving party contends support his or her position. The motion must be accompanied by a brief containing the points and authorities supporting the motion.

Any party may oppose such a motion by filing a response setting forth those material facts as to which he or she contends a genuine dispute exists. Such response must be supported by evidence of the same type as may be submitted in support of a motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(f) A motion under consideration by the Secretary or the hearing official shall not stay proceedings before the hearing official unless the Secretary or the hearing official, as appropriate, so orders.

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

[82 FR 6258, Jan. 19, 2017]

§ 668.89 Hearing.

(a) A hearing is an orderly presentation of arguments and evidence conducted by a hearing official. At the discretion of the hearing official, any right to a hearing may be satisfied by one or more of the following: Summary disposition pursuant to § 668.88(e), with or without oral argument; an oral evidentiary hearing conducted in person, by telephone, by video conference, or any combination thereof; or a review limited to written evidence.

(b)(1) Notwithstanding any provision to the contrary, the hearing official sets the procedures to be used in the hearing, and may take steps to expedite the proceeding as appropriate.

(2) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, discussions of settlement between the parties or the terms of settlement offers are not admissible to prove the validity or invalidity of any claim or defense.

(3)(i) The proponent of any factual proposition has the burden of proof with respect thereto.

(ii) The designated department official has the burden of persuasion in any fine, suspension, limitation, or termination proceeding under this subpart.

(iii) The designated department official has the burden of persuasion in a borrower defense and recovery action; however, for a borrower defense claim based on a substantial misrepresentation under § 682.222(d), the designated department official has the burden of persuasion regarding the substantial misrepresentation, and the institution has the burden of persuasion in establishing any offsetting value of the education under § 685.222(i)(2)(i).

(4) Discovery, as provided for under the Federal Rules of Civil Procedure, is not permitted.

(5) The hearing official accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(6) The hearing official may restrict the number of witnesses or exclude witnesses to avoid undue delay or presentation of cumulative evidence. Any witness permitted to appear may do so via telephonic, video, or other means, with the approval of the hearing official.

(7) Either party may call qualified expert witnesses. Each party will be limited to calling three expert witnesses, as a matter of right, including any rebuttal or surrebuttal witnesses. Additional expert witnesses shall be allowed only by order of the hearing official, granted only upon a showing of good cause.

(i) At a date set by the hearing official, each party shall serve the other with any report prepared by each of its expert witnesses. Each party shall serve the other party with a list of any rebuttal expert witnesses and a rebuttal report prepared by each such witness not later than 60 days after the deadline for service of expert reports, unless another date is set by the hearing official. A rebuttal report shall be limited to rebuttal of matters set forth in the expert report for which it is offered in rebuttal. If material outside the scope of fair rebuttal is presented, a party may file a motion not later than five days after the deadline for service of rebuttal reports, seeking appropriate relief with the hearing official, including striking all or part of the report, leave to submit a surrebuttal report by the party's own experts, or leave to call a surrebuttal witness and to submit a surrebuttal report by that witness.

(ii) No party may call an expert witness at the hearing unless the party has listed the expert and has provided reports as required by this section.

(iii) Each report shall be signed by the expert and contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data, materials, or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored or co-authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified or sought to testify as an expert at trial or hearing, or by deposition, within the preceding four years. A rebuttal or surrebuttal report need not include any information already included in the initial report of the witness.

(8)(i) Except as provided in paragraph (b)(8)(ii) of this section, if an institution has been required through compulsory process under section 490A of the HEA or other applicable law to submit to the United States or to the Department material regarding an express or an implied representation, the institution cannot thereafter, in any proceeding under this subpart in which it

is alleged that the representation was false, erroneous, or misleading, and for any purpose relating to the defense of such allegation, introduce into the record, either directly or indirectly through references contained in documents or oral testimony, any material of any type that was required to be but was not timely submitted in response to that compulsory process.

(ii) The hearing official shall, upon motion at any stage, exclude all material that was required to be but was not timely submitted in response to a compulsory process described in paragraph (b)(8)(i) of this section, or any reference to such material, unless the institution demonstrates, and the hearing official finds, that by the exercise of due diligence the material could not have been timely submitted in response to the compulsory process, and the institution notified the Department or such other party that issued the order to produce, of the existence of the material immediately upon its discovery. The hearing official shall specify with particularity the evidence relied upon.

(9) When issues not raised in the notice of proposed action are tried without objection at the hearing, they will be treated in all respects as if they had been raised in the notice of proposed action, and no formal amendments are required.

(c) The hearing official makes a transcribed record of the proceeding and makes a copy of the record available to the designated Department official and to the institution or servicer.

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

[82 FR 6258, Jan. 19, 2017]

§ 668.90 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of a hearing and the conduct of the parties during the hearing. The hearing official takes all necessary steps to conduct a fair and impartial hearing.

(b)(1) The hearing official is not authorized to issue subpoenas.

(2) If requested by the hearing official, the parties to a hearing shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The hearing official takes whatever measures are appropriate to expedite a hearing. These measures may include, but are not limited to, the following—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not—

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

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

[51 FR 43325, Dec. 1, 1986, as amended at 57 FR 47753, Oct. 19, 1992; 59 FR 22448, Apr. 29, 1994. Redesignated at 82 FR 6257, Jan. 19, 2017]

§ 668.91 Initial and final decisions.

(a)(1)(i) A hearing official issues a written initial decision in a hearing by certified mail, return receipt requested to—

(A) The designated department official who began a proceeding against an institution or third-party servicer;

(B) The institution or servicer, as applicable; and

(C) In the case of a proceeding against a third-party servicer, each institution that contracts with the servicer.

(ii) The hearing official may also transmit the notice by other, more expeditious means if practical.

(iii) The hearing official issues the decision within the latest of the following dates:

(A) The 30th day after the last submission is filed with the hearing official.

(B) The 60th day after the last submission is filed with the hearing official if the Secretary, upon request of the hearing official, determines that the unusual complexity of the case requires additional time for preparation of the decision.

(C) The 50th day after the last day of the hearing, if the hearing official does not request the parties to make any posthearing submission.

(2)(i) The hearing official's initial decision states whether the imposition of the fine, limitation, suspension, or termination or recovery sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution or servicer, the hearing official may, if appropriate, issue an initial decision to fine the institution or servicer, as applicable, or, rather than terminating the institution's participation or servicer's eligibility, as applicable, impose one or more limitations on the institution's participation or servicer's eligibility.

(ii) In a borrower defense and recovery proceeding conducted in two phases under § 668.87(a)(1)(iv)(B), the hearing official's initial decision determines whether the institution is liable for the act or omission described in the notice of intent to recover, and the hearing official issues an initial decision on liability only.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the hearing official finds that the institution has violated the provisions of § 668.14(b)(18), the hearing official also finds that termination of the institution's participation is warranted;

(ii) If, in a termination action against a third-party servicer, the hearing official finds that the servicer has violated the provisions of § 668.82(d)(1), the hearing official also finds that termination of the institution's participation or servicer's eligibility, as applicable, is warranted;

(iii) In an action brought against an institution or third-party servicer that involves its failure to provide a letter of credit or other financial protection under § 668.15 or § 668.171(c) through (g), the hearing official finds that the amount of the letter of credit or other financial protection established by the Secretary under § 668.175(f)(4) is appropriate, unless the institution can demonstrate that the amount was not warranted because—

(A) For financial protection demanded based on events or conditions described in § 668.171(c) through (f), the events or conditions no longer exist or have been resolved or the institution demonstrates that it has insurance that will cover the debts and liabilities that arise from the triggering event or condition, or, for a condition or event described in § 668.171(c)(1)(iii) (teach out) or (iv) (gainful employment eligibility loss), the amount of educationally related expenses reasonably attributable to the programs or location is greater than the amount calculated in accordance with Appendix C of subpart L of this part. The institution can demonstrate that insurance covers risk by presenting the Department with a statement from the insurer that the institution is covered for the full or partial amount of the liability in question;

(B) For financial protection demanded based on a suit described in § 668.171(c)(1)(i) that does not state a specific amount of relief and on which the court has not ruled on the amount of relief, the institution demonstrates that, accepting the facts alleged as true, and assuming the claims asserted are fully successful, the action pertains to a period, program, or location for which the maximum potential relief is less than the amount claimed or the amount determined under § 668.171(c)(2)(ii);

(C) For financial protection demanded based on the ground identified in § 668.171(g), the factor or event does not and will not have a material adverse effect on the financial condition, business, or results of operations of the institution;

(D)(*1*) For financial protection demanded under § 668.175(f)(4)(i), the institution does not participate and has not participated for the prior fiscal year in a title IV, HEA loan program; and

(*2*) For any financial protection demanded of an institution described in paragraph (a)(3)(iii)(D)(*1*) of this section, and any portion of financial protection demanded of any other institution greater than 10 percent of the amount of title IV, HEA funds received by the institution in its most recently completed fiscal year—

(i) The risk of loss to the Secretary on the grounds demonstrated by the Secretary does not exist;

(ii) The loss as demonstrated by the Secretary is not reasonably likely to arise within the next 18 months; or

(*iii*) The amount is unnecessary to protect, or contrary to, the Federal interest;

(E) The institution has proffered alternative financial protection that provides students and the Department adequate protection against losses resulting from the risks identified by the Secretary. In the Secretary's discretion, adequate protection may consist of one or more of the following—

(*1*) An agreement with the Secretary that a portion of the funds due to the institution under a reimbursement or heightened cash monitoring funding arrangement will be temporarily withheld in such amounts as will meet, no later than the end of a nine-month period, the amount of the required financial protection demanded; or

(*2*) Other form of financial protection specified by the Secretary in a notice published in the FEDERAL REGISTER.

(iv) In a termination action taken against an institution or third-party servicer based on the grounds that the institution or servicer failed to comply with the requirements of § 668.23(c)(3), if the hearing official finds that the institution or servicer failed to meet those requirements, the hearing official finds that the termination is warranted;

(v)(A) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.15(c)(1), the hearing official finds that the termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.15(d)(4) have been met; and

(B) In a termination or limitation action against an institution based on the grounds that the institution is not financially responsible—

(*1*) Upon proof of the conditions in § 668.174(a), the hearing official finds that the limitation or termination is warranted unless the institution demonstrates that all the conditions in § 668.175(f) have been met; and

(*2*) Upon proof of the conditions in § 668.174(b)(1), the hearing official finds that the limitation or termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.174(b)(2) or § 668.175(g) have been met.

(4) The hearing official bases findings of fact only on evidence considered at the hearing and on matters given judicial notice.

(b)(1) In a suspension proceeding, the Secretary reviews the hearing official's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) The Secretary notifies the institution or servicer and, in the case of a suspension proceeding against a third-party servicer, each institution that contracts with the servicer of the final decision. If the Secretary suspends the institution's participation or servicer's eligibility, the suspension takes effect on the later of—

(i) The day that the institution or servicer receives the notice; or

(ii) The date specified in the designated department official's original notice of intent to suspend the institution's participation or servicer's eligibility.

(3) A suspension may not exceed 60 days unless a designated department official begins a limitation or termination proceeding under this subpart before the expiration of that period. In that case, the period may be extended until a final decision is issued in that proceeding according to paragraph (c) of this section.

(c)(1) In a fine, limitation, or termination proceeding, the hearing official's initial decision automatically becomes the Secretary's final decision 30 days after the initial decision is issued and received by both parties unless, within that 30-day period, the institution or servicer, as applicable, or the designated department official appeals the initial decision to the Secretary.

(2)(i) A party may appeal the hearing official's initial decision by submitting to the Secretary, within 30 days after the party receives the initial decision, a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official.

(ii) At the time the party files its appeal submission, the party shall provide a copy of that submission to the opposing party.

(iii) The opposing party shall submit its brief or other responsive statement to the Secretary, with a copy to the appellant, within 30 days after the opposing party receives the appellant's brief or written statement.

(iv) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(A) The evidence introduced into the record at the hearing;

(B) Stipulations of the parties if the hearing consisted of written submissions; or

(C) Matters that may be judicially noticed.

(v) Neither party may introduce new evidence on appeal.

(vi) The initial decision of the hearing official imposing a fine or limiting or terminating the institution's participation or servicer's eligibility does not take effect pending the appeal.

(vii) The Secretary renders a final decision. The Secretary may delegate to a designated department official the functions described in paragraph (c)(2)(vii) through (ix) of this section.

(viii) In rendering a final decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted only of written submissions and matters that may be judicially noticed.

(ix) If the hearing official finds that a termination is warranted pursuant to paragraph (a)(3) of this section, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision. If the Secretary affirms the initial decision without issuing a statement of reasons, the Secretary adopts the opinion of the hearing official as the decision of the Secretary. If the Secretary modifies, remands, or reverses the initial decision, in whole or in part, the Secretary's decision states the reasons for the action taken.

(x) In a borrower defense and recovery proceeding conducted in two phases under § 668.87(a)(1)(iv)(B), if a party appeals an initial decision of the hearing official in the first phase, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision.

(Approved by the Office of Management and Budget under control number 1840–0537)

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

[59 FR 22448, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 60 FR 61774, Dec. 1, 1995; 65 FR 65637, Nov. 1, 2000. 81 FR 76072, Nov. 1, 2016. Redesignated and amended at 82 FR 6257, 6259, Jan. 19, 2017]

§ 668.92 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates.

(a) *Filing of request for hearing, show-cause opportunity, or appeal.* (1)(i) A request by an institution or third-party servicer for a hearing or show-cause opportunity, or other material submitted by an institution or third-party servicer in response to a notice of proposed action under this subpart, must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(ii) An appeal to the Secretary by a party must be filed with the designated department official by hand-delivery, mail, facsimile transmission, or by use of the Office of Hearings and Appeals Electronic Filing System (OES).

(2) Documents filed by facsimile transmission must be transmitted to the designated department official identified, either in the notice initiating the action, or, for an appeal, in instructions provided by the hearing official, as the individual responsible to receive them. A party filing a document by facsimile transmission must confirm that a complete and legible copy of the document was received by the Department of Education, and may be required by the designated department official to provide a hard copy of the document.

(3) The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(4)(i) A party may file an appeal to the Secretary, and any other pleading or other document submitted in a proceeding under this subpart, by use of the Office of Hearings and Appeals Electronic Filing System (OES), by hand-delivery, by mail, or by facsimile transmission.

(ii) A party must serve a copy on the other party of any pleading or other document it files, including an appeal to the Secretary, in a proceeding under this subpart. A party must do so by certified mail, return receipt requested; by hand-delivery; or, if agreed upon by the parties, service may also be made by use of the OES or any other means agreed to by the parties.

(iii) A party who agrees to receive a document by any means other than service by certified mail, return receipt requested or hand-delivery may limit that agreement to one or more particular documents.

(iv) A party who agrees to service of a document through the OES thereby agrees that the notice of such filing provided to the party by the OES suffices to meet any obligation of the filing party under these regulations to provide a copy of that document.

(5) Documents filed using the OES must be transmitted to the designated department official identified in instructions provided by the hearing official as the individual responsible to receive them. A party filing a document using the OES must ensure that the party has received an electronic confirmation that the document was accepted and approved for filing by the OES, and may be required by the designated department official to provide a hard copy of the document.

(6) Electronic documents must be formatted in Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at *www.adobe.com*.

(b) *Confirmation of mailing and receipt dates*. (1) The mailing date of a notice from a designated department official initiating an action under this subpart is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(2) The date on which a request for a show-cause opportunity, a request for a hearing, other material submitted in response to a notice of action under this subpart, a decision by a hearing official, or a notice of appeal is received is, as applicable—

(i) The date of receipt evidenced on the original receipt for a document sent by certified mail.

(ii) The date following the date recorded by the delivery service as the date material was sent for a document sent by next-day delivery service.

(iii) The date a document sent by regular mail is recorded, according to the regular business practice of the office receiving the document, as received.

(iv) The date a document sent by facsimile transmission is recorded as received by the facsimile equipment that receives the transmission.

(v) The date a document sent electronically via the OES is recorded as received by the OES as indicated in the confirmation of receipt email for E-filing.

(c) *Refusals*. If an institution or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution or servicer refuses to accept the notice.

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

[51 FR 43325, Dec. 1, 1986, as amended at 58 FR 13345, Mar. 10, 1993; 59 FR 22450, Apr. 29, 1994; 78 FR 48050, Aug. 7, 2013. Redesignated at 82 FR 6257, Jan. 19, 2017]

§ 668.93 Fines.

(a) In determining the amount of a fine, the designated department official, hearing official, and Secretary take into account—

(1) (i) The gravity of an institution's or third-party servicer's violation or failure to carry out the relevant statutory provision, regulatory provision, special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA; or

(ii) The gravity of the institution's or servicer's misrepresentation;

(2) The size of the institution;

(3) The size of the servicer's business, including the number of institutions and students served by the servicer;

(4) In the case of a violation by a third-party servicer, the extent to which the servicer can document that the institution contributed to that violation; and

(5) For purposes of assessing a fine on a third-party servicer, the extent to which—

(i) Violations are caused by repeated mechanical systemic unintentional errors. The Secretary counts the total of

violations caused by a repeated mechanical systemic unintentional error as a single violation, unless the servicer has been cited for a similar violation previously and had failed to make the appropriate corrections to the system; and

(ii) The financial loss of Title IV, HEA program funds was attributable to a repeated mechanical systemic unintentional error.

(b) In determining the gravity of the institution's or servicer's violation, failure, or misrepresentation under paragraph (a) of this section, the designated department official, hearing official, and Secretary take into account the amount of any liability owed by the institution and any third-party servicer that contracts with the institution, and the number of students affected as a result of that violation, failure, or misrepresentation on—

(1) Improperly expended or unspent Title IV, HEA program funds received by the institution or servicer, as applicable; or

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

(c) Upon the request of the institution or third-party servicer, the Secretary may compromise the fine.

(d)(1) Notwithstanding any other provision of statute or regulation, any individual described in paragraph (d)(2) of this section, in addition to other penalties provided by law, is liable to the Secretary for amounts that should have been refunded or returned under § 668.22 of the title IV program funds not returned, to the same extent with respect to those funds that such an individual would be liable as a responsible person for a penalty under section 6672(a) of Internal Revenue Code of 1986 with respect to the nonpayment of taxes.

(2) The individual subject to the penalty described in paragraph (d)(1) is any individual who—

(i) The Secretary determines, in accordance with § 668.174(c), exercises substantial control over an institution participating in, or seeking to participate in, a program under this title;

(ii) Is required under § 668.22 to return title IV program funds to a lender or to the Secretary on behalf of a student or borrower, or was required under § 668.22 in effect on June 30, 2000 to return title IV program funds to a lender or to the Secretary on behalf of a student or borrower; and

(iii) Willfully fails to return those funds or willfully attempts in any manner to evade that payment.

(Authority: 20 U.S.C. 1094 and 1099c)

[59 FR 22450, Apr. 29, 1994, as amended at 64 FR 58618, Oct. 29, 1999; 64 FR 59042, Nov. 1, 1999. Redesignated at 82 FR 6257, Jan. 19, 2017]

§ 668.94 Limitation.

A limitation may include, as appropriate to the Title IV, HEA program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A limit on the number or size of institutions with which a third-party servicer may contract;

(d) A limit on the number of borrower or loan accounts that a third-party servicer may service under a contract with an institution;

(e) A limit on the responsibilities that a third-party servicer may perform under a contract with an institution;

(f) A requirement for a third-party servicer to perform additional responsibilities under a contract with an institution;

(g) A requirement that an institution obtain surety, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds;

(h) A change in the participation status of the institution from fully certified to participate to provisionally certified to participate under § 668.13(c).

(i) A requirement that a third-party servicer obtain surety, in a specified amount, to assure the servicer's ability to meet the servicer's financial obligations under a contract; or

(j) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

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

[59 FR 22450, Apr. 29, 1994. 81 FR 76072, Nov. 1, 2016. Redesignated at 82 FR 6257, Jan. 17, 2017]

§ 668.95 Termination.

(a) *A termination*—(1) Ends an institution's participation in a Title IV, HEA program or ends a third-party servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program;

(2) Ends the authority of a third-party servicer to administer any aspect of any institution's participation in that program;

(3) Prohibits an institution or third-party servicer, as applicable, or the Secretary from making or increasing awards under that program;

(4) Prohibits an institution or third-party servicer, as applicable, from making any other new commitments of funds under that program; and

(5) If an institution's participation in the Federal Stafford Loan Program or Federal PLUS programs has been terminated, prohibits further guarantee commitments by the Secretary for loans under that program to students to attend that institution, and, if the institution is a lender under that program, prohibits further disbursements by the institution (whether or not guarantee commitments have been issued by the Secretary or a guaranty agency for those disbursements).

(b) After its participation in a Title IV, HEA program has been terminated, an institution may disburse or deliver funds under that Title IV, HEA program to students enrolled at the institution only in accordance with § 668.26 and with any additional requirements imposed under this part.

(c) If a third-party servicer's eligibility is terminated, the servicer must return to each institution that contracts with the servicer any funds received by the servicer under the applicable Title IV, HEA program on behalf of the institution or the institution's students or otherwise dispose of those funds under instructions from the Secretary. The servicer also must return to each institution that contracts with the servicer all records pertaining to the servicer's administration of that program on behalf of that institution.

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

[59 FR 22450, Apr. 29, 1994, as amended at 63 FR 40626, July 29, 1998. Redesignated at 82 FR 6257, Jan. 19, 2017]

§ 668.96 Reimbursements, refunds, and offsets.

(a) In an action to fine an institution or servicer, or to limit, suspend, or terminate the participation of an institution or the eligibility of a servicer, the designated department official, hearing official, or Secretary may require an institution or third-party servicer to take reasonable and appropriate corrective action to remedy the institution's or servicer's violation, as applicable, of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA.

(b) The corrective action under paragraph (a) of this section may include payment of any funds to the Secretary, or to designated recipients, that the institution or servicer, as applicable, improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs—

(i) Ineligible interest benefits, special allowances, or other claims paid by the Secretary; and

(ii) Discounts, premiums, or excess interest paid in violation of 34 CFR part 682; and

(2) With respect to all Title IV, HEA programs—

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

(ii) Any grants, work-study assistance, or loans made in violation of program regulations.

(c) If any final decision in any action under this subpart requires an institution or third-party servicer to reimburse or make any other payment to

the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution or servicer.

(d) If an institution's violation in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error. If the institution corrects or cures the error, the Secretary does not limit, suspend, terminate, or fine the institution for that error.

(Authority: 20 U.S.C. 1094 and 1099c–1)

[59 FR 22451, Apr. 29, 1994, as amended at 64 FR 58619, Oct. 29, 1999; 64 FR 59042, Nov. 1, 1999; Redsignated and amended at 82 FR 6257, 6259, Jan. 19, 2017]

§ 668.97 Reinstatement after termination.

(a)(1) An institution whose participation in a Title IV, HEA program has been terminated may file a request for reinstatement of that participation.

(2) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program has been terminated may file a request for reinstatement of that eligibility.

(b) An institution whose participation has been terminated or a third-party servicer whose eligibility has been terminated may request reinstatement only after the later of the expiration of—

(1) Eighteen months from the effective date of the termination; or

(2) A debarment or suspension under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(c) To be reinstated, an institution or third-party servicer must submit its request for reinstatement in writing to the Secretary and must—

(1) Demonstrate to the Secretary's satisfaction that it has corrected the violation or violations on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution or servicer, as applicable, has improperly received, withheld, disbursed, or caused to be disbursed;

(2) Meet all applicable requirements of this part; and

(3) In the case of an institution, enter into a new program participation agreement with the Secretary.

(d) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to a limitation or limitations.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1094; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

[59 FR 22451, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994. Redesignated at 82 FR 6257, Jan. 19, 2017]

§ 668.98 Removal of limitation.

(a) An institution whose participation in a Title IV, HEA program has been limited may not apply for removal of the limitation before the expiration of 12 months from the effective date of the limitation.

(b) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program has been limited may request removal of the limitation.

(c) The institution or servicer may not apply for removal of the limitation before the later of the expiration of—

(1) Twelve months from the effective date of the limitation; or

(2) A debarment or suspension under Executive Order 12549 (3 CFR, 1986 Comp., p. 189) or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(d) If the institution or servicer requests removal of the limitation, the request must be in writing and show that the institution or servicer, as applicable, has corrected the violation or violations on which the limitation was based.

(e) No later than 60 days after the Secretary receives the request, the Secretary responds to the institution or servicer—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation or limitations.

(f) If the Secretary denies the request or establishes other limitations, the Secretary grants the institution or servicer, upon the institution's or servicer's request, an opportunity to show cause why the participation or eligibility, as applicable, should be fully reinstated.

(g) The institution's or servicer's request for an opportunity to show cause does not waive—

(1) The institution's right to participate in any or all Title IV, HEA programs if it complies with the continuing limitation or limitations pending the outcome of the opportunity to show cause; and

(2) The servicer's right to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the servicer complies with the continuing limitation pending the outcome of the opportunity to show cause.

(Authority: 20 U.S.C. 1094; E.O. 12549 (3 CFR, 1986 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

[59 FR 22451, Apr. 29, 1994. Redesignated at 82 FR 6257, Jan. 19, 2017]

§ 668.99 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the Secretary, and a copy of a petition or any certification must be served upon the parties as provided in § 668.92(a)(4). The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties in the manner provided in § 668.91(a)(4)(ii).

(e) A party's response to a petition or certification for interlocutory review must be filed within 7 days after service of the petition or statement, as applicable, and may not exceed 10 pages, double-spaced, in length. The response must be filed, and a copy served on the other party, as provided in § 668.91(a)(4).

(f) The filing of a petition for interlocutory review does not automatically stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time

within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

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

(Approved by the Office of Management and Budget under control number 1801–0003)

[57 FR 60034, Dec. 17, 1992, as amended at 58 FR 14153, Mar. 16, 1993; 78 FR 48051, Aug. 7, 2013. Redesignated and amended at 82 FR 6257, 6259, Jan. 19, 2017]

Subpart H—Appeal Procedures for Audit Determinations and Program Review Determinations

SOURCE: 52 FR 30115, Aug. 12, 1987, unless otherwise noted. Correctly designated at 52 FR 46354, Dec. 7, 1987.

§ 668.111 Scope and purpose.

(a) This subpart establishes rules governing the appeal by an institution or third-party servicer from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any Title IV, HEA program or of the servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

(b) This subpart applies to any participating institution or third-party servicer that appeals a final audit determination or final program review determination.

(c) This subpart does not apply to proceedings governed by subpart G of this part or to a determination that—

(1) An institution fails to meet the applicable statutory definition set forth in sections 435, 481, or 1201 of the HEA, except to the extent that such a determination forms the basis of a final audit determination or a final program review determination; or

(2) An institution fails to qualify for certification to participate in the title IV, HEA programs because it does not meet the fiscal and administrative standards set forth in subpart B of this part, except to the extent that such a determination forms the basis of a final audit determination or a program review determination.

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

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 59 FR 22452, Apr. 29, 1994]

§ 668.112 Definitions.

The following definitions apply to this subpart:

(a) *Final audit determination* means the written notice of a determination issued by a designated department official based on an audit of—

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any or all of the Title IV, HEA programs.

(b) *Final program review determination* means the written notice of a determination issued by a designated department official and resulting from a program compliance review of—

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

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

[59 FR 22452, Apr. 29, 1994]

§ 668.113 Request for review.

(a) An institution or third-party servicer seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated department official.

(b) The institution or servicer must file its request for review no later than 45 days from the date that the institution or servicer receives the final audit determination or final program review determination.

(c) The institution or servicer shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution's or servicer's position, as applicable, together with the pertinent facts and reasons supporting that position.

(d)(1) If an institution's violation that resulted in the final audit determination or final program review determination in paragraph (a) of this section results from an administrative, accounting, or recordkeeping error, and that error was not part of a pattern of error, and there is no evidence of fraud or misconduct related to the error, the Secretary permits the institution to correct or cure the error.

(2) If the institution is charged with a liability as a result of an error described in paragraph (d)(1) of this section, the institution cures or corrects that error with regard to that liability if the cure or correction eliminates the basis for the liability.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1094 and 1099c–1)

[59 FR 22452, Apr. 29, 1994, as amended at 59 FR 34964, July 7, 1994; 64 FR 58619, Oct. 29, 1999; 78 FR 48051, Aug. 7, 2013]

§ 668.114 Notification of hearing.

(a) Upon receipt of an institution's or third-party servicer's request for review, the designated department official arranges for a hearing before a hearing official.

(b) Within 30 days of the designated department official's receipt of an institution's or third-party servicer's request for review, the hearing official notifies the designated department official and the parties to the proceeding of the schedule for the submission of briefs by both the designated department official and, as applicable, the institution or servicer.

(c) The hearing official schedules the submission of briefs and of accompanying evidence admissible under the terms of § 668.116 (e) and (f) to occur no later than 120 days from the date that the hearing official notifies the institution or servicer.

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

[59 FR 22452, Apr. 29, 1994]

§ 668.115 Prehearing conference.

(a) In the event that the hearing official considers a prehearing conference necessary, he may convene a prehearing conference.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute. A prehearing conference consists of—

(1) A telephone conference call;

(2) An informal meeting of the parties with the hearing official; or

(3) The submission and exchange of written materials by the parties.

(c) All prehearing conferences requiring appearances by the parties shall take place in the Washington, D.C. metropolitan area.

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

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992]

§ 668.116 Hearing.

(a) A hearing is a process conducted by the hearing official whereby an orderly presentation of arguments and evidence is made by the parties.

(b) The hearing process consists of the submission of written briefs to the hearing official by the institution or third-party servicer, as applicable, and by the designated department official, unless the hearing official determines, under paragraph (g) of this section, that an oral hearing is also necessary.

(c) Each party shall provide a copy of its brief and any accompanying materials to the opposing party simultaneously with the filing of its brief and materials with the hearing official.

(d) An institution or third-party servicer requesting review of the final audit determination or final program review determination issued by the designated department official shall have the burden of proving the following matters, as applicable:

(1) That expenditures questioned or disallowed were proper.

(2) That the institution or servicer complied with program requirements.

(e)(1) A party may submit as evidence to the hearing official only materials within one or more of the following categories:

(i) Department of Education audit reports and audit work papers for audits performed by the department's Office of Inspector General.

(ii) In the case of an institution, institutional audit work papers, records, and other materials.

(iii) In the case of a third-party servicer, the servicer's audit work papers and the records and other materials of the servicer or any institution that contracts with the servicer.

(iv) Department of Education program review reports and work papers for program reviews.

(v) Institutional or servicer records and other materials (including records and other materials of any institution that contracts with the servicer) provided to the Department of Education in response to a program review.

(vi) Other Department of Education records and materials.

(f) The hearing official accepts only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and material to the appeal. Examples of evidence that shall be deemed irrelevant and immaterial except upon a clear showing of probative value respecting the matters described in paragraph (d) of this section include—

(1) Evidence relating to a period of time other than the period of time covered by the audit or program review;

(2) Evidence relating to an audit or program review of an institution or third-party servicer other than the institution or servicer bringing the appeal, or the resolution thereof; and

(3) Evidence relating to the current practice of the institution or servicer bringing the appeal in the program areas at issue in the appeal.

(g)(1) The hearing official may schedule an oral argument if he or she determines that an oral argument is necessary to clarify the issues and the positions of the parties as presented in the parties' written submissions.

(2) In the event that an oral argument is conducted, the designated department official makes a transcribed record of the proceedings and makes one copy of that record available to each of the parties to the proceeding.

(h) Any oral argument shall take place in the Washington, DC metropolitan area.

(i) Either party may be represented by counsel.

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

[52 FR 30115, Aug. 12, 1987; 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992; 59 FR 22452, Apr. 29, 1994; 59 FR 61186, Nov. 29, 1994; 78 FR 48051, Aug. 7, 2013]

§ 668.117 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of the proceedings and the conduct of the parties following a request for review and takes all steps necessary to conduct fair and impartial proceedings.

(b) The hearing official is not authorized to issue subpoenas or compel discovery as provided for in the Federal Rules of Civil Procedure.

(c) The hearing official shall take whatever measures are appropriate to expedite the proceedings. These measures may include, but are not limited to, one or more of the following:

(1) Scheduling of conferences.

(2) Setting time limits for oral arguments and the submission of briefs.

(3) Terminating the hearing process and issuing a decision against a party if that party does not meet time limits established by the hearing official.

(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not—

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

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

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992]

§ 668.118 Decision of the hearing official.

(a) Upon review of the parties' written submissions and termination of the oral argument if one is held, the hearing official issues a written decision.

(b) The hearing official's decision states and explains whether the final audit determination or final program review determination issued by the

designated ED official was supportable, in whole or in part.

(c) The hearing official bases any findings of fact only on evidence properly presented before him, on matters given official notice, or on facts stipulated to by the parties.

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

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992]

§ 668.119 Appeal to the Secretary.

(a) Within 30 days of its receipt of the initial decision of the hearing official, a party wishing to appeal the decision shall submit a brief or other written material to the Secretary explaining why the decision of the hearing official should be overturned or modified.

(b) The party appealing the initial decision shall, simultaneously with its filing of the appeal, provide the opposing party with a copy of its brief or other written material.

(c) In its brief to the Secretary, the party appealing the initial decision may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(1) The admissible evidence already in the record;

(2) Matters that may be given official notice; or

(3) Stipulations of the parties

(d) The opposing party shall file its response to the appeal, if any, with the Secretary within 30 days of that party's receipt of the appeal to the Secretary.

(e) The opposing party shall, simultaneously with the filing of any response, provide a copy of its response to the appeal to the party appealing the initial decision.

(f) Neither party may introduce new evidence on appeal.

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

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992; 57 FR 60035, Dec. 17, 1992]

§ 668.120 Decision of the Secretary.

(a)(1) The Secretary issues a final decision. The Secretary may affirm, modify, or reverse the decision of the hearing official, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision.

(2) The Secretary may delegate the performance of functions under this section to a designated department official.

(b) If the Secretary modifies, remands, or overturns the initial decision of the hearing official, the Secretary issues a decision that—

(1) Includes a statement of the reasons for this action;

(2) Is provided to both parties; and

(3) Unless the decision is remanded to the hearing official for further review or determination of fact, becomes final upon its issuance.

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

[52 FR 30115, Aug. 12, 1987, correctly designated at 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992; 57 FR 60035, Dec. 17, 1992]

§ 668.121 Final decision of the Department.

(a) In the event that the initial decision of the hearing official is appealed, the decision of the Secretary is the final decision of the Department, unless the hearing official's decision is remanded by the Secretary.

(b) In the event that the initial decision of the hearing official is not appealed within the time limit specified in § 668.119(a), the initial decision automatically becomes the final decision of the Department.

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

[52 FR 30115, Aug. 12, 1987; 52 FR 46354, Dec. 7, 1987, as amended at 57 FR 47753, Oct. 19, 1992]

§ 668.122 Determination of filing, receipt, and submission dates.

(a)(1) Appeals and written submissions to a hearing official referred to in this subpart may be hand-delivered, mailed, or filed electronically by use of the Office of Hearings and Appeals Electronic Filing System (OES).

(2)(i) Service on the other party of a document required to be served on another party may be made by mail or by hand delivery, or, if agreed upon by the parties, by use of the OES or by any other means agreed to by the parties. A

party who agrees to receive a document filed by another party by any means other than service by mail or hand-delivery may limit that agreement to one or more particular documents.

(ii) A party who agrees to service of a document through the OES thereby agrees that the notice of such filing provided to the party by the OES suffices to meet any obligation of the filing party under these regulations to provide a copy of that document.

(b) All mailed written submissions referred to in this subpart shall be mailed by certified mail, return receipt requested.

(c) Determination of filing, receipt, or submission dates is based on the date of hand-delivery, the date of receipt recorded by the U.S. Postal Service, the date a document sent electronically by using the OES is recorded as received as indicated in the confirmation of receipt email for E-filing, or for other means, the date on which the delivery is recorded in the medium used for delivery.

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

[52 FR 30115, Aug. 12, 1987, as amended at 78 FR 48051, Aug. 7, 2013]

§ 668.123 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or program review determination, subject to the provisions of § 668.24(c)(3), the Department of Education will take steps to collect the debt at issue or otherwise effect the determination that was subject to the request for review.

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

[59 FR 22453, Apr. 29, 1994]

§ 668.124 Interlocutory appeals to the Secretary from rulings of a hearing official.

(a) A ruling by a hearing official may not be appealed to the Secretary until the issuance of an initial decision, except that the Secretary may, at any time prior to the issuance of the initial decision, grant a review of a ruling upon either a certification by a hearing official of the ruling to the Secretary for review or the filing of a petition for review of a ruling by one or both of the parties, if—

(1) That ruling involves a controlling question of substantive or procedural law; and

(2) The immediate resolution of the question will materially advance the final disposition of the proceeding or subsequent review will be an inadequate remedy.

(b)(1) A petition for interlocutory review of an interim ruling must include the following:

(i) A brief statement of the facts necessary to an understanding of the issue on which review is sought.

(ii) A statement of the issue.

(iii) A statement of the reasons showing that the ruling complained of involves a controlling question of substantive or procedural law and why immediate review of the ruling will materially advance the disposition of the case, or why subsequent review will be an inadequate remedy.

(2) A petition may not exceed ten pages, double-spaced, and must be filed with a copy of the ruling and any findings and opinions relating to the ruling.

(c) A copy of the petition must be provided to the hearing official at the time of filing with the Secretary, and a copy of a petition or any certification must be served upon the parties as provided in § 668.122(a)(2). The petition or certification must reflect this service.

(d) If a party files a petition under this section, the hearing official may state to the Secretary a view as to whether review is appropriate or inappropriate by submitting a brief statement addressing the party's petition within 10 days of the receipt of that petition by the hearing official. A copy of the statement must be served on all parties in the manner provided in § 668.122(a)(2).

(e) A party's response to a petition or certification for interlocutory review must be filed within 7 days after service of the petition or statement, as applicable, and may not exceed 10 pages, double-spaced, in length. A copy of the response must be served on the parties and the hearing official as provided in § 668.122(a)(2).

(f) The filing of a petition for interlocutory review does not automatically

stay the proceedings. A stay during consideration of a petition for review may be granted by the hearing official if that official has certified or stated to the Secretary that review of the ruling is appropriate. The Secretary may order a stay of proceedings at any time after the filing of a request for interlocutory review.

(g) The Secretary notifies the parties if a petition or certification for interlocutory review is accepted, and may provide the parties a reasonable time within which to submit written argument with regard to the merit of the petition or certification.

(h) If the Secretary takes no action on a petition or certification for review within 15 days of receipt of it, the request is deemed to be denied.

(i) The Secretary may affirm, modify, set aside, or remand the interim ruling of the hearing official.

(j) The Secretary may delegate to a designated department official the functions described in paragraphs (f) through (i) of this section.

(Approved by the Office of Management and Budget under control number 1801–0003)

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

[57 FR 60035, Dec. 17, 1992, as amended at 58 FR 14153, Mar. 16, 1993; 78 FR 48051, Aug. 7, 2013]

Subpart I—Immigration-Status Confirmation

AUTHORITY: 20 U.S.C. 1091, 1092, and 1094, unless otherwise noted.

SOURCE: 58 FR 3184, Jan. 7, 1993, unless otherwise noted.

§ 668.130 General.

(a) *Scope and purpose.* The regulations in this subpart govern the responsibilities of institutions and students in determining the eligibility of those noncitizen applicants for title IV, HEA assistance who must, under § 668.33(a)(2), produce evidence from the United States Immigration and Naturalization Service (INS) that they are permanent residents of the United States or in the United States for other than a temporary purpose with the intention of becoming citizens or permanent residents.

(b) *Student responsibility.* At the request of the Secretary or the institution at which an applicant for title IV, HEA financial assistance is enrolled or accepted for enrollment, an applicant who asserts eligibility under § 668.33(a)(2) shall provide documentation from the INS of immigration status.

(Authority: 20 U.S.C. 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998]

§ 668.131 Definitions.

The following definitions apply to this subpart:

Eligible noncitizen: An individual possessing an immigration status that meets the requirements of § 668.33(a)(2).

Immigration status: The status conferred on a noncitizen under the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1182.

Primary confirmation: A process by which the Secretary, by means of a matching program conducted with the INS, compares the information contained in an Application for Federal Student Aid or a multiple data entry application regarding the immigration status of a noncitizen applicant for title IV, HEA assistance with records of that status maintained by the INS in its Alien Status Verification Index (ASVI) system for the purpose of determining whether a student's immigration status meets the requirements of § 668.33(a)(2) and reports the results of this comparison on an output document.

Secondary confirmation: A process by which the INS, in response to the submission of INS Document Verification Form G–845 by an institution, searches pertinent paper and automated INS files, other than the ASVI database, for the purpose of determining a student's immigration status and the validity of the submitted INS documents, and reports the results of this search to the institution.

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

[58 FR 3184, Jan. 7, 1993, as amended at 59 FR 12521, Mar. 16, 1994; 63 FR 40626, July 29, 1998]

§ 668.132 Institutional determinations of eligibility based on primary confirmation.

(a) Except as provided in § 668.133(a)(1)(ii), the institution shall determine a student to be an eligible noncitizen if the institution receives an output document for that student establishing that—

(1) The INS has confirmed the student's immigration status; and

(2) The student's immigration status meets the noncitizen eligibility requirements of § 668.33(a)(2).

(b) If an institution determines a student to be an eligible noncitizen in accordance with paragraph (a) of this section, the institution may not require the student to produce the documentation otherwise required under § 668.33(a)(2).

(Authority: 20 U.S.C. 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998]

§ 668.133 Conditions under which an institution shall require documentation and request secondary confirmation.

(a) *General requirements.* Except as provided in paragraph (b) of this section, an institution shall require the student to produce the documentation required under § 668.33(a)(2) and request the INS to perform secondary confirmation for a student claiming eligibility under § 668.33(a)(2), in accordance with the procedures set forth in § 668.135, if—

(1) The institution—

(i) Receives an output document indicating that the student must provide the institution with evidence of the student's immigration status required under § 668.33(a)(2); or

(ii) Receives an output document that satisfies the requirements of § 668.132(a) (1) and (2), but the institution—

(A) Has documentation that conflicts with immigration-status documents submitted by the student or the immigration status reported on the output document; or

(B) Has reason to believe that the immigration status reported by the student or on the output document is incorrect; and

(2) The institution determines that the immigration-status documents submitted by the student constitute reasonable evidence of the student's claim to be an eligible noncitizen.

(b) *Exclusions from secondary confirmation.* (1) An institution may not require the student to produce the documentation requested under § 668.33(a)(2) and may not request that INS perform secondary confirmation, if the student—

(i) Demonstrates eligibility under the provisions of § 668.33 (a)(1) or (b); or

(ii) Demonstrated eligibility under the provisions of § 668.33(a)(2) in a previous award year as a result of secondary confirmation and the documents used to establish that eligibility have not expired; and

(iii) The institution does not have conflicting documentation or reason to believe that the student's claim of citizenship or immigration status is incorrect.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 1840–0650)

(Authority: 20 U.S.C. 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 58 FR 26674, May 4, 1993; 60 FR 61813, Dec. 1, 1995; 63 FR 40626, July 29, 1998]

§ 668.134 Institutional policies and procedures for requesting documentation and receiving secondary confirmation.

(a) An institution shall establish and use written policies and procedures for requesting proof and securing confirmation of the immigration status of applicants for title IV, HEA student financial assistance who claim to meet the eligibility requirements of § 668.33(a)(2). These policies and procedures must include—

(1) Providing the student a deadline by which to provide the documentation that the student wishes to have considered to support the claim that the student meets the requirements of § 668.33(a)(2);

(2) Providing to the student information concerning the consequences of a failure to provide the documentation by the deadline set by the institution; and

(3) Providing that the institution will not make a determination that the student is not an eligible noncitizen until

the institution has provided the student the opportunity to submit the documentation in support of the student's claim of eligibility under § 668.33(a)(2).

(b) An institution shall furnish, in writing, to each student required to undergo secondary confirmation—

(1) A clear explanation of the documentation the student must submit as evidence that the student satisfies the requirements of § 668.33(a)(2); and

(2) A clear explanation of the student's responsibilities with respect to the student's compliance with § 668.33(a)(2), including the deadlines for completing any action required under this subpart and the consequences of failing to complete any required action, as specified in § 668.137.

(Approved by the Office of Management and Budget under control number 1840–0650)

(Authority: 20 U.S.C. 1091, 1092, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 58 FR 26674, May 4, 1993; 63 FR 40626, July 29, 1998]

§ 668.135 Institutional procedures for completing secondary confirmation.

Within 10 business days after an institution receives the documentary evidence of immigration status submitted by a student required to undergo secondary confirmation, the institution shall—

(a) Complete the request portion of the INS Document Verification Request Form G–845;

(b) Copy front and back sides of all immigration-status documents received from the student and attach copies to the Form G–845; and

(c) Submit Form G–845 and attachments to the INS District Office.

(Approved by the Office of Management and Budget under control number 1840–0650)

(Authority: 20 U.S.C. 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 58 FR 26674, May 4, 1993]

§ 668.136 Institutional determinations of eligibility based on INS responses to secondary confirmation requests.

(a) Except as provided in paragraphs (b) and (c) of this section, an institution that has requested secondary confirmation under § 668.133(a) shall make its determination concerning a student's eligibility under § 668.33(a)(2) by relying on the INS response to the Form G–845.

(b) An institution shall make its determination concerning a student's eligibility under § 668.33(a)(2) pending the institution's receipt of an INS response to the institution's Form G–845 request concerning that student, if—

(1) The institution has given the student an opportunity to submit documents to the institution to support the student's claim to be an eligible noncitizen;

(2) The institution possesses sufficient documentation concerning a student's immigration status to make that determination;

(3) At least 15 business days have elapsed from the date that the institution sent the Form G–845 request to the INS;

(4) The institution has no documentation that conflicts with the immigration-status documentation submitted by the student; and

(5) The institution has no reason to believe that the immigration status reported by the applicant is incorrect.

(c) An institution shall establish and use policies and procedures to ensure that, if the institution has disbursed or released title IV, HEA funds to the student in the award year or employed the student under the Federal Work-Study Program, and the institution determines, in reliance on the INS response to the institution's request for secondary confirmation regarding that student, that the student was in fact not an eligible noncitizen during that award year, the institution provides the student with notice of the institution's determination, an opportunity to contest the institution's determination, and notice of the institution's final determination.

(Authority: 20 U.S.C. 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998]

§ 668.137 Deadlines for submitting documentation and the consequences of failure to submit documentation.

(a) A student shall submit before a deadline specified by the institution all documentation the student wishes to have considered to support a claim

that the student meets the requirements of § 668.33(a)(2). The deadline, set by the institution, must be not less than 30 days from the date the institution receives the student's output document.

(b) If a student fails to submit the documentation by the deadline established in accordance with paragraph (a) of this section, the institution may not disburse to the student, or certify the student as eligible for, any title IV, HEA program funds for that period of enrollment or award year; employ the student under the Federal Work-Study Program; certify a Federal Stafford or Federal PLUS loan application, or originate a Direct Loan Program loan application for the student for that period of enrollment.

(Authority: 20 U.S.C. 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998]

§ 668.138 Liability.

(a) A student is liable for any LEAP, FSEOG, Federal Pell Grant, ACG, National SMART Grant, or TEACH Grant payment and for any Federal Stafford, Direct Subsidized, Direct Unsubsidized or Federal Perkins loan made to him or her if the student was ineligible for the Title IV, HEA assistance.

(b) A Federal PLUS or Direct PLUS Loan borrower is liable for any Federal PLUS or Direct PLUS Loan made to him or her on behalf of an ineligible student.

(c) The Secretary does not take any action against an institution with respect to an error in the institution's determination that a student is an eligible noncitizen if, in making that determination, the institution followed the provisions in this subpart and relied on—

(1) An output document for that student indicating that the INS has confirmed that the student's immigration status meets the eligibility requirements for title IV, HEA assistance;

(2) An INS determination of the student's immigration status and the authenticity of the student's immigration documents provided in response to the institution's request for secondary confirmation; or

(3) Immigration-status documents submitted by the student and the institution did not have reason to believe that the documents did not support the student's claim to be an eligible noncitizen.

(d) Except as provided in paragraph (c) of this section, if an institution makes an error in its determination that a student is an eligible noncitizen, the institution is liable for any title IV, HEA disbursements made to this student during the award year or period of enrollment for which the student applied for title IV, HEA assistance.

(Authority: 20 U.S.C. 1070g, 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998; 65 FR 38729, June 22, 2000; 71 FR 38003, July 3, 2006; 73 FR 35493, June 23, 2008]

§ 668.139 Recovery of payments and loan disbursements to ineligible students.

(a) If an institution makes a payment of a grant or a disbursement of a Federal Perkins loan to an ineligible student for which it is not liable in accordance with § 668.138, it shall assist the Secretary in recovering the funds by—

(1) Making a reasonable effort to contact the student; and

(2) Making a reasonable effort to collect the payment or Federal Perkins loan.

(b) If an institution causes a Federal Stafford, Federal PLUS, Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan to be disbursed to or on behalf of an ineligible student for which it is not liable in accordance with § 668.138, it shall assist the Secretary in recovering the funds by notifying the lender in the case of an FFEL Program loan or the Secretary in the case of a Direct Loan Program loan that the student has failed to establish eligibility under the requirements of §§ 668.201 or 685.200, as appropriate.

(c) If an institution is liable for a payment of a grant or Federal Perkins loan to an ineligible student, the institution shall restore the amount equal to the payment or disbursement to the institution's Federal Perkins loan fund or Federal Pell Grant, ACG, National SMART Grant, TEACH Grant, FSEOG,

or LEAP amount, even if the institution cannot collect the payment or disbursement from the student.

(d) If an institution is liable for a Federal Stafford, Federal PLUS, Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan disbursement to an ineligible student, the institution shall repay an amount equal to the disbursement to the lender in the case of an FFEL Program loan or the Secretary in the case of a Direct Loan Program loan, and provide written notice to the borrower.

(Authority: 20 U.S.C. 1070g, 1091, 1094)

[58 FR 3184, Jan. 7, 1993, as amended at 63 FR 40626, July 29, 1998; 64 FR 38729, June 22, 2000; 71 FR 38003, July 3, 2006; 73 FR 35493, June 23, 2008]

Subpart J—Approval of Independently Administered Tests; Specification of Passing Score; Approval of State Process

SOURCE: 75 FR 66960, Oct. 29, 2010, unless otherwise noted.

§ 668.141 Scope.

(a) This subpart sets forth the provisions under which a student who has neither a high school diploma nor its recognized equivalent may become eligible to receive title IV, HEA program funds by—

(1) Achieving a passing score, specified by the Secretary, on an independently administered test approved by the Secretary under this subpart; or

(2) Being enrolled in an eligible institution that participates in a State process approved by the Secretary under this subpart.

(b) Under this subpart, the Secretary sets forth—

(1) The procedures and criteria the Secretary uses to approve tests;

(2) The basis on which the Secretary specifies a passing score on each approved test;

(3) The procedures and conditions under which the Secretary determines that an approved test is independently administered;

(4) The information that a test publisher or a State must submit, as part of its test submission, to explain the methodology it will use for the test anomaly studies as described in § 668.144(c)(17) and (d)(8), as appropriate;

(5) The requirements that a test publisher or a State, as appropriate—

(i) Have a process to identify and follow up on test score irregularities;

(ii) Take corrective action—up to and including decertification of test administrators—if the test publisher or the State determines that test score irregularities have occurred; and

(iii) Report to the Secretary the names of any test administrators it decertifies and any other action taken as a result of test score analyses; and

(6) The procedures and conditions under which the Secretary determines that a State process demonstrates that students in the process have the ability to benefit from the education and training being offered to them.

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

§ 668.142 Special definitions.

The following definitions apply to this subpart:

Assessment center: A facility that—

(1) Is located at an eligible institution that provides two-year or four-year degrees or is a postsecondary vocational institution;

(2) Is responsible for gathering and evaluating information about individual students for multiple purposes, including appropriate course placement;

(3) Is independent of the admissions and financial aid processes at the institution at which it is located;

(4) Is staffed by professionally trained personnel;

(5) Uses test administrators to administer tests approved by the Secretary under this subpart; and

(6) Does not have as its primary purpose the administration of ability to benefit tests.

ATB test irregularity: An irregularity that results from an ATB test being administered in a manner that does not conform to the established rules for test administration consistent with the provisions of subpart J of part 668 and the test administrator's manual.

Computer-based test: A test taken by a student on a computer and scored by a computer.

General learned abilities: Cognitive operations, such as deductive reasoning, reading comprehension, or translation from graphic to numerical representation, that may be learned in both school and non-school environments.

Independent test administrator: A test administrator who administers tests at a location other than an assessment center and who—

(1) Has no current or prior financial or ownership interest in the institution, its affiliates, or its parent corporation, other than the fees earned for administering approved ATB tests through an agreement with the test publisher or State and has no controlling interest in any other institution;

(2) Is not a current or former employee of or consultant to the institution, its affiliates, or its parent corporation, a person in control of another institution, or a member of the family of any of these individuals;

(3) Is not a current or former member of the board of directors, a current or former employee of or a consultant to a member of the board of directors, chief executive officer, chief financial officer of the institution, its affiliates, or its parent corporation or of any other institution, or a member of the family of any of these individuals; and

(4) Is not a current or former student of the institution.

Individual with a disability: A person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Non-native speaker of English: A person whose first language is not English and who is not fluent in English.

Secondary school level: As applied to ''content,'' ''curricula,'' or ''basic verbal and quantitative skills,'' the basic knowledge or skills generally learned in the 9th through 12th grades in United States secondary schools.

Test: A standardized test, assessment or instrument that has formal protocols on how it is to be administered in order to be valid. These protocols include, for example, the use of parallel, equated forms; testing conditions; time allowed for the test; and standardized scoring. Tests are not limited to traditional paper and pencil (or computer-administered) instruments for which forms are constructed prior to administration to examinees. Tests may also include adaptive instruments that use computerized algorithms for selecting and administering items in real time; however, for such instruments, the size of the item pool and the method of item selection must ensure negligible overlap in items across retests.

Test administrator: An individual who is certified by the test publisher (or the State, in the case of an approved State test or assessment) to administer tests approved under this subpart in accordance with the instructions provided by the test publisher or the State, as applicable, which includes protecting the test and the test results from improper disclosure or release, and who is not compensated on the basis of test outcomes.

Test item: A question on a test.

Test publisher: An individual, organization, or agency that owns a registered copyright of a test, or has been authorized by the copyright holder to represent the copyright holder's interests regarding the test.

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

§ 668.143 [Reserved]

§ 668.144 Application for test approval.

(a) The Secretary only reviews tests under this subpart that are submitted by the publisher of that test or by a State.

(b) A test publisher or a State that wishes to have its test approved by the Secretary under this subpart must submit an application to the Secretary at such time and in such manner as the Secretary may prescribe. The application must contain all the information necessary for the Secretary to approve the test under this subpart, including but not limited to, the information contained in paragraph (c) or (d) of this section, as applicable.

(c) A test publisher must include with its application—

(1) A summary of the precise editions, forms, levels, and (if applicable) sub-tests for which approval is being sought;

(2) The name, address, telephone number, and e-mail address of a contact person to whom the Secretary may address inquiries;

(3) Each edition, form, level, and subtest of the test for which the test publisher requests approval;

(4) The distribution of test scores for each edition, form, level, or sub-test for which approval is sought, that allows the Secretary to prescribe the passing score for each test in accordance with § 668.147;

(5) Documentation of test development, including a history of the test's use;

(6) Norming data and other evidence used in determining the distribution of test scores;

(7) Material that defines the content domains addressed by the test;

(8) Documentation of periodic reviews of the content and specifications of the test to ensure that the test reflects secondary school level verbal and quantitative skills;

(9) If a test being submitted is a revision of the most recent edition approved by the Secretary, an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and data from validity studies of the test undertaken subsequent to the revisions;

(10) A description of the manner in which test-taking time was determined in relation to the content representativeness requirements in § 668.146(b)(3) and an analysis of the effects of time on performance. This description may also include the manner in which test-taking time was determined in relation to the other requirements in § 668.146(b);

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;

(iv) Evidence that the test was normed using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with temporary impairments, individuals with disabilities and guidance on the types of accommodations that are allowable;

(12) The manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the test publisher;

(13) An analysis of the item-content of each edition, form, level, and (if applicable) sub-test to demonstrate compliance with the required secondary school level criterion specified in § 668.146(b);

(14) A description of retesting procedures and the analysis upon which the criteria for retesting are based;

(15) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146;

(16) A description of its test administrator certification process that provides—

(i) How the test publisher will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with this subpart and the test publisher's requirements; and

(ii) How the test publisher will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;

(17) A description of the test anomaly analysis the test publisher will conduct and submit to the Secretary that includes—

(i) An explanation of how the test publisher will identify potential test irregularities and make a determination that test irregularities have occurred;

(ii) An explanation of the process and procedures for corrective action (up to and including decertification of a certified test administrator) when the test publisher determines that test irregularities have occurred; and

(iii) Information on when and how the test publisher will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that test publisher, that the test administrator has been decertified; and

(18)(i) An explanation of any accessible technologies that are available to accommodate individuals with disabilities, and

(ii) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes.

(d) A State must include with its application—

(1) The information necessary for the Secretary to determine that the test the State uses measures a student's skills and abilities for the purpose of determining whether the student has the skills and abilities the State expects of a high school graduate in that State;

(2) The passing scores on that test;

(3) Any guidance on the interpretation of scores resulting from any modifications of the test for individuals with disabilities;

(4) A statement regarding how the test will be kept secure;

(5) A description of retesting procedures and the analysis upon which the criteria for retesting are based;

(6) Other evidence establishing the test's compliance with the criteria for approval of tests as provided in § 668.146;

(7) A description of its test administrator certification process that provides—

(i) How the State will determine that the test administrator has the necessary training, knowledge, skill, and integrity to test students in accordance with the State's requirements; and

(ii) How the State will determine that the test administrator has the ability and facilities to keep its test secure against disclosure or release;

(8) A description of the test anomaly analysis that the State will conduct and submit to the Secretary that includes—

(i) An explanation of how the State will identify potential test irregularities and make a determination that test irregularities have occurred;

(ii) An explanation of the process and procedures for corrective action (up to and including decertification of a test administrator) when the State determines that test irregularities have occurred; and

(iii) Information on when and how the State will notify a test administrator, the Secretary, and the institutions for which the test administrator had previously provided testing services for that State, that the test administrator has been decertified;

(9)(i) An explanation of any accessible technologies that are available to accommodate individuals with disabilities; and

(ii) A description of the process for a test administrator to identify and report to the test publisher when accommodations for individuals with disabilities were provided, for scoring and norming purposes; and

(10) The name, address, telephone number, and e-mail address of a contact person to whom the Secretary may address inquiries.

(11) A technical manual that includes—

(i) An explanation of the methodology and procedures for measuring the reliability of the test;

(ii) Evidence that different forms of the test, including, if applicable, short forms, are comparable in reliability;

(iii) Other evidence demonstrating that the test permits consistent assessment of individual skill and ability;

(iv) Evidence that the test was normed using—

(A) Groups that were of sufficient size to produce defensible standard errors of the mean and were not disproportionately composed of any race or gender; and

(B) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States;

(v) Documentation of the level of difficulty of the test;

(vi) Unambiguous scales and scale values so that standard errors of measurement can be used to determine statistically significant differences in performance; and

(vii) Additional guidance on the interpretation of scores resulting from any modifications of the test for individuals with temporary impairments, individuals with disabilities and guidance on the types of accommodations that are allowable;

(12) the manual provided to test administrators containing procedures and instructions for test security and administration, and the forwarding of tests to the State.

Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.145 Test approval procedures.

(a)(1) When the Secretary receives a complete application from a test publisher or a State, the Secretary selects one or more experts in the field of educational testing and assessment, who possess appropriate advanced degrees and experience in test development or psychometric research, to determine whether the test meets the requirements for test approval contained in §§ 668.146, 668.147, 668.148, or 668.149, as appropriate, and to advise the Secretary of their determinations.

(2) If the test involves a language other than English, the Secretary selects at least one individual who is fluent in the language in which the test is written to collaborate with the testing expert or experts described in paragraph (a)(1) of this section and to advise the Secretary on whether the test meets the additional criteria, provisions, and conditions for test approval contained in §§ 668.148 and 668.149.

(3) For test batteries that contain multiple sub-tests measuring content domains other than verbal and quantitative domains, the Secretary reviews only those sub-tests covering the verbal and quantitative domains.

(b)(1) If the Secretary determines that a test satisfies the criteria and requirements for test approval, the Secretary notifies the test publisher or the State, as applicable, of the Secretary's decision, and publishes the name of the test and the passing scores in the FEDERAL REGISTER.

(2) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the Secretary notifies the test publisher or the State, as applicable, of the Secretary's decision, and the reasons why the test did not meet those criteria and requirements.

(3) If the Secretary determines that a test does not satisfy the criteria and requirements for test approval, the test publisher or the State that submitted the test for approval may request that the Secretary reevaluate the Secretary's decision. Such a request must be accompanied by—

(i) Documentation and information that address the reasons for the non-approval of the test; and

(ii) An analysis of why the information and documentation submitted meet the criteria and requirements for test approval notwithstanding the Secretary's earlier decision to the contrary.

(c)(1) The Secretary approves a test for a period not to exceed five years from the date the notice of approval of the test is published in the FEDERAL REGISTER.

(2) The Secretary extends the approval period of a test to include the period of review if the test publisher or the State, as applicable, re-submits the test for review and approval under § 668.144 at least six months before the date on which the test approval is scheduled to expire.

(d)(1) The Secretary's approval of a test may be revoked if the Secretary determines that the test publisher or the State violated any terms of the agreement described in § 668.150, that the information the test publisher or

the State submitted as a basis for approval of the test was inaccurate, or that the test publisher or the State substantially changed the test and did not resubmit the test, as revised, for approval.

(2) If the Secretary revokes approval of a previously approved test, the Secretary publishes a notice of that revocation in the FEDERAL REGISTER. The revocation becomes effective—

(i) One hundred and twenty days from the date the notice of revocation is published in the FEDERAL REGISTER; or

(ii) An earlier date specified by the Secretary in a notice published in the FEDERAL REGISTER.

Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.146 Criteria for approving tests.

(a) Except as provided in § 668.148, the Secretary approves a test under this subpart if—

(1) The test meets the criteria set forth in paragraph (b) of this section;

(2) The test publisher or the State satisfies the requirements set forth in paragraph (c) of this section; and

(3) The Secretary makes a determination that the information the test publisher or State submitted in accordance with § 668.144(c)(17) or (d)(8), as applicable, provides adequate assurance that the test publisher or State will conduct rigorous test anomaly analyses and take appropriate action if test administrators do not comply with testing procedures.

(b) To be approved under this subpart, a test must—

(1) Assess secondary school level basic verbal and quantitative skills and general learned abilities;

(2) Sample the major content domains of secondary school level verbal and quantitative skills with sufficient numbers of questions to—

(i) Adequately represent each domain; and

(ii) Permit meaningful analyses of item-level performance by students who are representative of the contemporary population beyond the age of compulsory school attendance and have earned a high school diploma;

(3) Require appropriate test-taking time to permit adequate sampling of the major content domains described in paragraph (b)(2) of this section;

(4) Have all forms (including short forms) comparable in reliability;

(5) Have, in the case of a test that is revised, new scales, scale values, and scores that are demonstrably comparable to the old scales, scale values, and scores;

(6) Meet all standards for test construction provided in the 1999 edition of the *Standards for Educational and Psychological Testing*, prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Federal Student Aid, room 113E2, 830 First Street, NE., Washington, DC 20002, phone (202) 377–4026, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–866–272–6272, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The document also may be obtained from the American Educational Research Association at: *http://www.aera.net;* and

(7) Have the test publisher's or the State's guidelines for retesting, including time between test-taking, be based on empirical analyses that are part of the studies of test reliability.

(c) In order for a test to be approved under this subpart, a test publisher or a State must—

(1) Include in the test booklet or package—

(i) Clear, specific, and complete instructions for test administration, including information for test takers on the purpose, timing, and scoring of the test; and

(ii) Sample questions representative of the content and average difficulty of the test;

(2) Have two or more secure, equated, alternate forms of the test;

(3) Except as provided in §§ 668.148 and 668.149, provide tables of distributions of test scores which clearly indicate the mean score and standard deviation for high school graduates who have taken the test within three years prior to the date that the test is submitted to the Secretary for approval under § 668.144;

(4) Norm the test with—

(i) Groups that are of sufficient size to produce defensible standard errors of the mean and are not disproportionately composed of any race or gender; and

(ii) A contemporary sample that is representative of the population of persons who have earned a high school diploma in the United States; and

(5) If test batteries include sub-tests assessing different verbal and/or quantitative skills, a distribution of test scores as described in paragraph (c)(3) of this section that allows the Secretary to prescribe either—

(i) A passing score for each sub-test; or

(ii) One composite passing score for verbal skills and one composite passing score for quantitative skills.

Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.147 Passing scores.

Except as provided in §§ 668.144(d), 668.148, and 668.149, to demonstrate that a test taker has the ability to benefit from the education and training offered by the institution, the Secretary specifies that the passing score on each approved test is one standard deviation below the mean score of a sample of individuals who have taken the test within the three years before the test is submitted to the Secretary for approval. The sample must be representative of the population of high school graduates in the United States.

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

§ 668.148 Additional criteria for the approval of certain tests.

(a) In addition to satisfying the criteria in § 668.146, to be approved by the Secretary, a test must meet the following criteria, if applicable:

(1) In the case of a test developed for a non-native speaker of English who is enrolled in a program that is taught in his or her native language, the test must be—

(i) Linguistically accurate and culturally sensitive to the population for which the test is designed, regardless of the language in which the test is written;

(ii) Supported by documentation detailing the development of normative data;

(iii) If translated from an English version, supported by documentation of procedures to determine its reliability and validity with reference to the population for which the translated test was designed;

(iv) Developed in accordance with guidelines provided in the 1999 edition of the ''Testing Individuals of Diverse Linguistic Backgrounds'' section of the *Standards for Educational and Psychological Testing* prepared by a joint committee of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education incorporated by reference in this section. Incorporation by reference of this document has been approved by the Director of the Office of the Federal Register pursuant to the Director's authority under 5 U.S.C. 552(a) and 1 CFR part 51. The incorporated document is on file at the Department of Education, Federal Student Aid, room 113E2, 830 First Street, NE., Washington, DC 20002, phone (202) 377–4026, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–866–272–6272, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. The document also may be obtained from the American Educational Research Association at: *http://www.aera.net;* and

(v)(A) If the test is in Spanish, accompanied by a distribution of test scores that clearly indicates the mean score and standard deviation for Spanish-speaking students with high school

diplomas who have taken the test within five years before the date on which the test is submitted to the Secretary for approval.

(B) If the test is in a language other than Spanish, accompanied by a recommendation for a provisional passing score based upon performance of a sample of test takers representative of non-English speaking individuals who speak a language other than Spanish and who have a high school diploma. The sample upon which the recommended provisional passing score is based must be large enough to produce stable norms.

(2) In the case of a test that is modified for use for individuals with disabilities, the test publisher or State must—

(i) Follow guidelines provided in the ''Testing Individuals with Disabilities'' section of the *Standards for Educational and Psychological Testing;* and

(ii) Provide documentation of the appropriateness and feasibility of the modifications relevant to test performance.

(3) In the case of a computer-based test, the test publisher or State, as applicable, must—

(i) Provide documentation to the Secretary that the test complies with the basic principles of test construction and standards of reliability and validity as promulgated in the *Standards for Educational and Psychological Testing;*

(ii) Provide test administrators with instructions for familiarizing test takers with computer hardware prior to test-taking; and

(iii) Provide two or more parallel, equated forms of the test, or, if parallel forms are generated from an item pool, provide documentation of the methods of item selection for alternate forms.

(b) If a test is designed solely to measure the English language competence of non-native speakers of English—

(1) The test must meet the criteria set forth in § 668.146(b)(6), (c)(1), (c)(2), and (c)(4); and

(2) The test publisher must recommend a passing score based on the mean score of test takers beyond the age of compulsory school attendance who completed U.S. high school equivalency programs, formal training programs, or bilingual vocational programs.

Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.149 Special provisions for the approval of assessment procedures for individuals with disabilities.

If no test is reasonably available for individuals with disabilities so that no test can be approved under §§ 668.146 or 668.148 for these individuals, the following procedures apply:

(a) The Secretary considers a modified test or testing procedure, or instrument that has been scientifically developed specifically for the purpose of evaluating the ability to benefit from postsecondary training or education of individuals with disabilities to be an approved test for purposes of this subpart provided that the testing procedure or instrument measures both basic verbal and quantitative skills at the secondary school level.

(b) The Secretary considers the passing scores for these testing procedures or instruments to be those recommended by the test publisher or State, as applicable.

(c) The test publisher or State, as applicable, must—

(1) Maintain appropriate documentation, including a description of the procedures or instruments, their content domains, technical properties, and scoring procedures; and

(2) Require the test administrator to—

(i) Use the procedures or instruments in accordance with instructions provided by the test publisher or State, as applicable; and

(ii) Use the passing scores recommended by the test publisher or State, as applicable.

Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.150 Agreement between the Secretary and a test publisher or a State.

(a) If the Secretary approves a test under this subpart, the test publisher

or the State that submitted the test must enter into an agreement with the Secretary that contains the provisions set forth in paragraph (b) of this section before an institution may use the test to determine a student's eligibility for title IV, HEA program funds.

(b) The agreement between a test publisher or a State, as applicable, and the Secretary provides that the test publisher or the State, as applicable, must—

(1) Allow only test administrators that it certifies to give its test;

(2) Require each test administrator it certifies to—

(i) Provide the test publisher or the State, as applicable, with a certification statement that indicates he or she is not currently decertified; and

(ii) Notify the test publisher or the State, as applicable, immediately if any other test publisher or State decertifies the test administrator;

(3) Only certify test administrators who—

(i) Have the necessary training, knowledge, and skill to test students in accordance with the test publisher's or the State's testing requirements;

(ii) Have the ability and facilities to keep its test secure against disclosure or release; and

(iii) Have not been decertified within the last three years by any test publisher or State;

(4) Decertify a test administrator for a period of three years if the test publisher or the State finds that the test administrator—

(i) Has failed to give its test in accordance with the test publisher's or the State's instructions;

(ii) Has not kept the test secure;

(iii) Has compromised the integrity of the testing process; or

(iv) Has given the test in violation of the provisions contained in § 668.151;

(5) Reevaluate the qualifications of a test administrator who has been decertified by another test publisher or State and determine whether to continue the test administrator's certification or to decertify the test administrator;

(6) Immediately notify the test administrator, the Secretary, and the institutions where the test administrator previously administered approved tests when the test publisher or the State decertifies a test administrator;

(7)(i) Review the test results of the tests administered by a decertified test administrator and determine which tests may have been improperly administered during the five (5) year period preceding the date of decertification;

(ii) Immediately notify the affected institutions and students or prospective students; and

(iii) Provide a report to the Secretary on the results of the review and the notifications provided to institutions and students or prospective students;

(8) Report to the Secretary if the test publisher or the State certifies a previously decertified test administrator after the three year period specified in paragraph (b)(4) of this section;

(9) Score a test answer sheet that it receives from a test administrator;

(10) If a computer-based test is used, provide the test administrator with software that will—

(i) Immediately generate a score report for each test taker;

(ii) Allow the test administrator to send to the test publisher or the State, as applicable, a record of the test taker's performance on each test item and the test taker's test scores using a data transfer method that is encrypted and secure; and

(iii) Prohibit any changes in test taker responses or test scores;

(11) Promptly send to the student and the institution the student indicated he or she is attending or scheduled to attend a notice stating the student's score for the test and whether or not the student passed the test;

(12) Keep each test answer sheet or electronic record forwarded for scoring and all other documents forwarded by the test administrator with regard to the test for a period of three years from the date the analysis of the tests results, described in paragraph (b)(13) of this section, was sent to the Secretary;

(13) Analyze the test scores of students who take the test to determine whether the test scores and data produce any irregular pattern that raises an inference that the tests were not being properly administered, and provide the Secretary with a copy of this analysis within 18 months after

the test was approved and every 18 months thereafter during the period of test approval;

(14) Upon request, give the Secretary, a State agency, an accrediting agency, and law enforcement agencies access to test records or other documents related to an audit, investigation, or program review of an institution, the test publisher, or a test administrator;

(15) Immediately report to the Secretary if the test publisher or the State finds any credible information indicating that a test has been compromised;

(16) Immediately report to the Office of Inspector General of the Department of Education for investigation if the test publisher or the State finds any credible information indicating that a test administrator or institution may have engaged in civil or criminal fraud, or other misconduct; and

(17) Require a test administrator who provides a test to an individual with a disability who requires an accommodation in the test's administration to report to the test publisher or the State within the time period specified in § 668.151(b)(2) or § 668.152(b)(2), as applicable, the nature of the disability and the accommodations that were provided.

(c)(1) The Secretary may terminate an agreement with a test publisher or a State, as applicable, if the test publisher or the State fails to carry out the terms of the agreement described in paragraph (b) of this section.

(2) Before terminating the agreement, the Secretary gives the test publisher or the State, as applicable, the opportunity to show that it has not failed to carry out the terms of its agreement.

(3) If the Secretary terminates an agreement with a test publisher or a State under this section, the Secretary publishes a notice in the FEDERAL REGISTER specifying when institutions may no longer use the test publisher's or the State's test(s) for purposes of determining a student's eligibility for title IV, HEA program funds.

Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.151 Administration of tests.

(a)(1) To establish a student's eligibility for title IV, HEA program funds under this subpart, an institution must select a test administrator to give an approved test.

(2) An institution may use the results of an approved test it received from an approved test publisher or assessment center to determine a student's eligibility to receive title IV, HEA program funds if the test was independently administered and properly administered in accordance with this subpart.

(b) The Secretary considers that a test is independently administered if the test is—

(1) Given at an assessment center by a certified test administrator who is an employee of the center; or

(2) Given by an independent test administrator who maintains the test at a secure location and submits the test for scoring by the test publisher or the State or, for a computer-based test, a record of the test scores, within two business days of administering the test.

(c) The Secretary considers that a test is not independently administered if an institution—

(1) Compromises test security or testing procedures;

(2) Pays a test administrator a bonus, commission, or any other incentive based upon the test scores or pass rates of its students who take the test; or

(3) Otherwise interferes with the test administrator's independence or test administration.

(d) The Secretary considers that a test is properly administered if the test administrator—

(1) Is certified by the test publisher or the State, as applicable, to give the test publisher's or the State's test;

(2) Administers the test in accordance with instructions provided by the test publisher or the State, as applicable, and in a manner that ensures the integrity and security of the test;

(3) Makes the test available only to a test-taker, and then only during a regularly scheduled test;

(4) Secures the test against disclosure or release; and

(5) Submits the completed test or, for a computer-based test, a record of test scores, to the test publisher or the

State, as applicable, within the time period specified in § 668.152(b) or paragraph (b)(2) of this section, as appropriate, and in accordance with the test publisher's or the State's instructions.

(e) An independent test administrator may not score a test.

(f) An individual who fails to pass a test approved under this subpart may not retake the same form of the test for the period prescribed by the test publisher or the State responsible for the test.

(g) An institution must maintain a record for each individual who took a test under this subpart. The record must include—

(1) The test taken by the individual;

(2) The date of the test;

(3) The individual's scores as reported by the test publisher, an assessment center, or the State;

(4) The name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State; and

(5) If the individual who took the test is an individual with a disability and was unable to be evaluated by the use of an approved ATB test or the individual requested or required testing accommodations, documentation of the individual's disability and of the testing arrangements provided in accordance with § 668.153(b).

(Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.152 Administration of tests by assessment centers.

(a) If a test is given by an assessment center, the assessment center must properly administer the test as described in § 668.151(d), and § 668.153, if applicable.

(b)(1) Unless an agreement between a test publisher or a State, as applicable, and an assessment center indicates otherwise, an assessment center scores the tests it gives and promptly notifies the institution and the student of the student's score on the test and whether the student passed the test.

(2) If the assessment center scores the test, it must provide weekly to the test publisher or the State, as applicable—

(i) All copies of the completed test, including the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State, as applicable; or

(ii) A report listing all test-takers' scores and institutions to which the scores were sent and the name and address of the test administrator who administered the test and any identifier assigned to the test administrator by the test publisher or the State, as applicable.

(Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.153 Administration of tests for individuals whose native language is not English or for individuals with disabilities.

(a) *Individuals whose native language is not English.* For an individual whose native language is not English and who is not fluent in English, the institution must use the following tests, as applicable:

(1) If the individual is enrolled or plans to enroll in a program conducted entirely in his or her native language, the individual must take a test approved under §§ 668.146 and 668.148(a)(1).

(2) If the individual is enrolled or plans to enroll in a program that is taught in English with an ESL component, the individual must take an English language proficiency assessment approved under § 668.148(b) and, before beginning the portion of the program taught in English, a test approved under § 668.146.

(3) If the individual is enrolled or plans to enroll in a program that is taught in English without an ESL component, or the individual does not enroll in any ESL component offered, the individual must take a test in English approved under § 668.146.

(4) If the individual enrolls in an ESL program, the individual must take an ESL test approved under § 668.148(b).

(5) If the individual enrolls or plans to enroll in a program that is taught in the student's native language that either has an ESL component or a portion of the program will be taught in English, the individual must take an English proficiency test approved

under § 668.148(b) prior to beginning the portion of the program taught in English.

(b) *Individuals with disabilities.* (1) For an individual with a disability who has neither a high school diploma nor its equivalent and who is applying for title IV, HEA program funds and seeks to show his or her ability to benefit through the testing procedures in this subpart, an institution must use a test described in § 668.148(a)(2) or § 668.149(a).

(2) The test must reflect the individual's skills and general learned abilities.

(3) The test administrator must ensure that there is documentation to support the determination that the individual is an individual with a disability and requires accommodations—such as extra time or a quiet room—for taking an approved test, or is unable to be evaluated by the use of an approved ATB test.

(4) Documentation of an individual's disability may be satisfied by—

(i) A written determination, including a diagnosis and information about testing accommodations, if such accommodation information is available, by a licensed psychologist or physician; or

(ii) A record of the disability from a local or State educational agency, or other government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the individual's disability. This record may, but is not required to, include a diagnosis and recommended testing accommodations.

(Approved by the Office of Management and Budget under control number 1845–0049)

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

§ 668.154 Institutional accountability.

An institution is liable for the title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if—

(a) The institution used a test that was not administered independently, in accordance with § 668.151(b);

(b) The institution or an employee of the institution compromised the testing process in any way; or

(c) The institution is unable to document that the student received a passing score on an approved test.

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

§ 668.155 [Reserved]

§ 668.156 Approved State process.

(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test for the purpose of determining a student's eligibility for title IV, HEA program funds must apply to the Secretary for approval of that process.

(2) To be an approved State process, the State process does not have to include all the institutions located in that State, but must indicate which institutions are included.

(b) The Secretary approves a State's process if—

(1) The State administering the process can demonstrate that the students it admits under that process without a high school diploma or its equivalent, who enroll in participating institutions have a success rate as determined under paragraph (h) of this section that is within 95 percent of the success rate of students with high school diplomas; and

(2) The State's process satisfies the requirements contained in paragraphs (c) and (d) of this section.

(c) A State process must require institutions participating in the process to provide each student they admit without a high school diploma or its recognized equivalent with the following services:

(1) Orientation regarding the institution's academic standards and requirements, and student rights.

(2) Assessment of each student's existing capabilities through means other than a single standardized test.

(3) Tutoring in basic verbal and quantitative skills, if appropriate.

(4) Assistance in developing educational goals.

(5) Counseling, including counseling regarding the appropriate class level for that student given the student's individual's capabilities.

(6) Follow-up by teachers and counselors regarding the student's classroom performance and satisfactory progress toward program completion.

(d) A State process must—

(1) Monitor on an annual basis each participating institution's compliance with the requirements and standards contained in the State's process;

(2) Require corrective action if an institution is found to be in noncompliance with the State process requirements; and

(3) Terminate an institution from the State process if the institution refuses or fails to comply with the State process requirements.

(e)(1) The Secretary responds to a State's request for approval of its State's process within six months after the Secretary's receipt of that request. If the Secretary does not respond by the end of six months, the State's process is deemed to be approved.

(2) An approved State process becomes effective for purposes of determining student eligibility for title IV, HEA program funds under this subpart—

(i) On the date the Secretary approves the process; or

(ii) Six months after the date on which the State submits the process to the Secretary for approval, if the Secretary neither approves nor disapproves the process during that six month period.

(f) The Secretary approves a State process for a period not to exceed five years.

(g)(1) The Secretary withdraws approval of a State process if the Secretary determines that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(2) The Secretary provides a State with the opportunity to contest a finding that the State process violated any terms of this section or that the information that the State submitted as a basis for approval of the State process was inaccurate.

(h) The State must calculate the success rates as referenced in paragraph (b) of this section by—

(1) Determining the number of students with high school diplomas who, during the applicable award year described in paragraph (i) of this section, enrolled in participating institutions and—

(i) Successfully completed education or training programs;

(ii) Remained enrolled in education or training programs at the end of that award year; or

(iii) Successfully transferred to and remained enrolled in another institution at the end of that award year;

(2) Determining the number of students with high school diplomas who enrolled in education or training programs in participating institutions during that award year;

(3) Determining the number of students calculated in paragraph (h)(2) of this section who remained enrolled after subtracting the number of students who subsequently withdrew or were expelled from participating institutions and received a 100 percent refund of their tuition under the institutions' refund policies;

(4) Dividing the number of students determined in paragraph (h)(1) of this section by the number of students determined in paragraph (h)(3) of this section;

(5) Making the calculations described in paragraphs (h)(1) through (h)(4) of this section for students without a high school diploma or its recognized equivalent who enrolled in participating institutions.

(i) For purposes of paragraph (h) of this section, the applicable award year is the latest complete award year for which information is available that immediately precedes the date on which the State requests the Secretary to approve its State process, except that the award year selected must be one of the latest two completed award years preceding that application date.

(Approved by the Office of Management and Budget under control number 1845–0049)

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

Subpart K—Cash Management

SOURCE: 80 FR 67194, Oct. 30, 2015, unless otherwise noted.

§ 668.161 Scope and institutional responsibility.

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

(2) As used in this subpart—

(i) *Access device* means a card, code, or other means of access to a financial account, or any combination thereof, that may be used by a student to initiate electronic fund transfers;

(ii) *Day* means a calendar day, unless otherwise specified;

(iii) *Depository account* means an account at a depository institution described in 12 U.S.C. 461(b)(1)(A), or an account maintained by a foreign institution at a comparable depository institution that meets the requirements of § 668.163(a)(1);

(iv) *EFT (Electronic Funds Transfer)* means a transaction initiated electronically instructing the crediting or debiting of a financial account, or an institution's depository account. For purposes of transactions initiated by the Secretary, the term ''EFT'' includes all transactions covered by 31 CFR 208.2(f). For purposes of transactions initiated by or on behalf of an institution, the term ''EFT'' includes, from among the transactions covered by 31 CFR 208.2(f), only Automated Clearinghouse transactions;

(v) *Financial account* means a student's or parent's checking or savings account, prepaid card account, or other consumer asset account held directly or indirectly by a financial institution;

(vi) *Financial institution* means a bank, savings association, credit union, or any other person or entity that directly or indirectly holds a financial account belonging to a student, issues to a student an access device associated with a financial account, and agrees with the student to provide EFT services;

(vii) *Parent* means the parent borrower of a Direct PLUS Loan;

(viii) *Student ledger account* means a bookkeeping account maintained by an institution to record the financial transactions pertaining to a student's enrollment at the institution; and

(ix) *Title IV, HEA programs* means the Federal Pell Grant, Iraq-Afghanistan Service Grant, TEACH Grant, FSEOG, Federal Perkins Loan, FWS, and Direct Loan programs, and any other program designated by the Secretary.

(b) *Federal interest in title IV, HEA program funds.* Except for funds provided by the Secretary for administrative expenses, and for funds used for the Job Location and Development Program under 20 CFR part 675, subpart B, funds received by an institution under the title IV, HEA programs are held in trust for the intended beneficiaries or the Secretary. The institution, as a trustee of those funds, may not use or hypothecate (*i.e.*, use as collateral) the funds for any other purpose or otherwise engage in any practice that risks the loss of those funds.

(c) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to managing title IV, HEA program funds under this subpart.

§ 668.162 Requesting funds.

(a) *General.* The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution under the advance payment method, reimbursement payment method, or heightened cash monitoring payment method.

(b) *Advance payment method.* (1) Under the advance payment method, an institution submits a request for funds to the Secretary. The institution's request may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents.

(2) If the Secretary accepts that request, the Secretary initiates an EFT of that amount to the depository account designated by the institution.

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

(c) *Reimbursement payment method.* (1) Under the reimbursement payment method, an institution must credit a student's ledger account for the

amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under § 668.164(h), before the institution seeks reimbursement from the Secretary for those disbursements.

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

(3) As part of its reimbursement request, the institution must—

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

(ii) Submit to the Secretary, or an entity approved by the Secretary, documentation that shows that each student or parent included in the request was—

(A) Eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(B) Paid directly any credit balance due under § 668.164(h).

(4) The Secretary will not approve the amount of the institution's reimbursement request for a student or parent and will not initiate an EFT of that amount to the depository account designated by the institution, if the Secretary determines with regard to that student or parent, and in the judgment of the Secretary, that the institution has not—

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

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

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

(d) *Heightened cash monitoring payment method.* Under the heightened cash monitoring payment method, an institution must credit a student's ledger account for the amount of title IV, HEA program funds that the student or parent is eligible to receive, and pay the amount of any credit balance due under § 668.164(h), before the institution—

(1) Submits a request for funds under the provisions of the advance payment method described in paragraphs (b)(1) and (2) of this section, except that the institution's request may not exceed the amount of the disbursements the institution has made to the students included in that request; or

(2) Seeks reimbursement for those disbursements under the provisions of the reimbursement payment method described in paragraph (c) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the reimbursement request.

§ 668.163 Maintaining and accounting for funds.

(a)(1) *Institutional depository account.* An institution must maintain title IV, HEA program funds in a depository account. For an institution located in a State, the depository account must be insured by the FDIC or NCUA. For a foreign institution, the depository account may be insured by the FDIC or NCUA, or by an equivalent agency of the government of the country in which the institution is located. If there is no equivalent agency, the Secretary may approve a depository account designated by the foreign institution.

(2) For each depository account that includes title IV, HEA program funds, an institution located in a State must clearly identify that title IV, HEA program funds are maintained in that account by—

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

(ii)(A) Notifying the depository institution that the depository account contains title IV, HEA program funds that are held in trust and retaining a record of that notice; and

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

(b) *Separate depository account.* The Secretary may require an institution to maintain title IV, HEA program

funds in a separate depository account that contains no other funds if the Secretary determines that the institution failed to comply with—

(1) The requirements in this subpart;

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

(3) Applicable program regulations.

(c) *Interest-bearing depository account.* (1) An institution located in a State is required to maintain its title IV, HEA program funds in an interest-bearing depository account, except as provided in 2 CFR 200.305(b)(8).

(2) Any interest earned on Federal Perkins Loan program funds is retained by the institution as provided under 34 CFR 674.8(a).

(3) An institution may keep the initial $500 in interest it earns during the award year on other title IV, HEA program funds it maintains in accordance with paragraph (c)(1) of this section. No later than 30 days after the end of that award year, the institution must remit to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852, any interest over $500.

(d) *Accounting and fiscal records.* An institution must—

(1) Maintain accounting and internal control systems that identify the cash balance of the funds of each title IV, HEA program that are included in the institution's depository account or accounts as readily as if those funds were maintained in a separate depository account;

(2) Identify the earnings on title IV, HEA program funds maintained in the institution's depository account or accounts; and

(3) Maintain its fiscal records in accordance with the provisions in § 668.24.

§ 668.164 Disbursing funds.

(a) *Disbursement.* (1) Except as provided under paragraph (a)(2) of this section, a disbursement of title IV, HEA program funds occurs on the date that the institution credits the student's ledger account or pays the student or parent directly with—

(i) Funds received from the Secretary; or

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

(2)(i) For a Direct Loan for which the student is subject to the delayed disbursement requirements under 34 CFR 685.303(b)(5), if an institution credits a student's ledger account with institutional funds earlier than 30 days after the beginning of a payment period, the Secretary considers that the institution makes that disbursement on the 30th day after the beginning of the payment period; or

(ii) If an institution credits a student's ledger account with institutional funds earlier than 10 days before the first day of classes of a payment period, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes of a payment period.

(b) *Disbursements by payment period.* (1) Except for paying a student under the FWS program or unless 34 CFR 685.303(d)(4)(i) applies, an institution must disburse during the current payment period the amount of title IV, HEA program funds that a student enrolled at the institution, or the student's parent, is eligible to receive for that payment period.

(2) An institution may make a prior year, late, or retroactive disbursement, as provided under paragraph (c)(3), (j), or (k) of this section, respectively, during the current payment period as long as the student was enrolled and eligible during the payment period covered by that prior year, late, or retroactive disbursement.

(3) At the time a disbursement is made to a student for a payment period, an institution must confirm that the student is eligible for the type and amount of title IV, HEA program funds identified by that disbursement. A third-party servicer is also responsible for confirming the student's eligibility if the institution engages the servicer to perform activities or transactions that lead to or support that disbursement. Those activities and transactions include but are not limited to—

(i) Determining the type and amount of title IV, HEA program funds that a student is eligible to receive;

(ii) Requesting funds under a payment method described in § 668.162; or

(iii) Accounting for funds that are originated, requested, or disbursed, in reports or data submissions to the Secretary.

(c) *Crediting a student's ledger account.* (1) An institution may credit a student's ledger account with title IV, HEA program funds to pay for allowable charges associated with the current payment period. Allowable charges are—

(i) The amount of tuition, fees, and institutionally provided room and board assessed the student for the payment period or, as provided in paragraph (c)(5) of this section, the prorated amount of those charges if the institution debits the student's ledger account for more than the charges associated with the payment period; and

(ii) The amount incurred by the student for the payment period for purchasing books, supplies, and other educationally related goods and services provided by the institution for which the institution obtains the student's or parent's authorization under § 668.165(b).

(2) An institution may include the costs of books and supplies as part of tuition and fees under paragraph (c)(1)(i) of this section if —

(i) The institution—

(A) Has an arrangement with a book publisher or other entity that enables it to make those books or supplies available to students below competitive market rates;

(B) Provides a way for a student to obtain those books and supplies by the seventh day of a payment period; and

(C) Has a policy under which the student may opt out of the way the institution provides for the student to obtain books and supplies under this paragraph (c)(2). A student who opts out under this paragraph (c)(2) is considered to also opt out under paragraph (m)(3) of this section;

(ii) The institution documents on a current basis that the books or supplies, including digital or electronic course materials, are not available elsewhere or accessible by students enrolled in that program from sources other than those provided or authorized by the institution; or

(iii) The institution demonstrates there is a compelling health or safety reason.

(3)(i) An institution may include in one or more payment periods for the current year, prior year charges of not more than $200 for—

(A) Tuition, fees, and institutionally provided room and board, as provided under paragraph (c)(1)(i) of this section, without obtaining the student's or parent's authorization; and

(B) Educationally related goods and services provided by the institution, as described in paragraph (c)(1)(ii) of this section, if the institution obtains the student's or parent's authorization under § 668.165(b).

(ii) For purposes of this section—

(A) The current year is—

(*1*) The current loan period for a student or parent who receives only a Direct Loan;

(*2*) The current award year for a student who does not receive a Direct Loan but receives funds under any other title IV, HEA program; or

(*3*) At the discretion of the institution, either the current loan period or the current award year if a student receives a Direct Loan and funds from any other title IV, HEA program.

(B) A prior year is any loan period or award year prior to the current loan period or award year, as applicable.

(4) An institution may include in the current payment period unpaid allowable charges from any previous payment period in the current award year or current loan period for which the student was eligible for title IV, HEA program funds.

(5) For purposes of this section, an institution determines the prorated amount of charges associated with the current payment period by—

(i) For a program with substantially equal payment periods, dividing the total institutional charges for the program by the number of payment periods in the program; or

(ii) For other programs, dividing the number of credit or clock hours in the current payment period by the total number of credit or clock hours in the program, and multiplying that result by the total institutional charges for the program.

(d) *Direct payments.* (1) Except as provided under paragraph (d)(3) of this section, an institution makes a direct payment—

(i) To a student, for the amount of the title IV, HEA program funds that a student is eligible to receive, including Direct PLUS Loan funds that the student's parent authorized the student to receive, by—

(A) Initiating an EFT of that amount to the student's financial account;

(B) Issuing a check for that amount payable to, and requiring the endorsement of, the student; or

(C) Dispensing cash for which the institution obtains a receipt signed by the student;

(ii) To a parent, for the amount of the Direct PLUS Loan funds that a parent does not authorize the student to receive, by—

(A) Initiating an EFT of that amount to the parent's financial account;

(B) Issuing a check for that amount payable to and requiring the endorsement of the parent; or

(C) Dispensing cash for which the institution obtains a receipt signed by the parent.

(2) *Issuing a check.* An institution issues a check on the date that it—

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

(ii) Notifies the student or parent that the check is available for immediate pick-up at a specified location at the institution. The institution may hold the check for no longer than 21 days after the date it notifies the student or parent. If the student or parent does not pick up the check, the institution must immediately mail the check to the student or parent, pay the student or parent directly by other means, or return the funds to the appropriate title IV, HEA program.

(3) *Payments by the Secretary.* The Secretary may pay title IV, HEA credit balances under paragraphs (h) and (m) of this section directly to a student or parent using a method established or authorized by the Secretary and published in the FEDERAL REGISTER.

(4) *Student choice.* (i) An institution located in a State that makes direct payments to a student by EFT and that enters into an arrangement described in paragraph (e) or (f) of this section, including an institution that uses a third-party servicer to make those payments, must establish a selection process under which the student chooses one of several options for receiving those payments.

(A) In implementing its selection process, the institution must—

(*1*) Inform the student in writing that he or she is not required to open or obtain a financial account or access device offered by or through a specific financial institution;

(*2*) Ensure that the student's options for receiving direct payments are described and presented in a clear, fact-based, and neutral manner;

(*3*) Ensure that initiating direct payments by EFT to a student's existing financial account is as timely and no more onerous to the student as initiating an EFT to an account provided under an arrangement described in paragraph (e) or (f) of this section;

(*4*) Allow the student to change, at any time, his or her previously selected payment option, as long as the student provides the institution with written notice of the change within a reasonable time;

(*5*) Ensure that no account option is preselected; and

(*6*) Ensure that a student who does not make an affirmative selection is paid the full amount of the credit balance within the appropriate time-period specified in paragraph (h)(2) of this section, using a method specified in paragraph (d)(1) of this section.

(B) In describing the options under its selection process, the institution—

(*1*) Must present prominently as the first option, the financial account belonging to the student;

(*2*) Must list and identify the major features and commonly assessed fees associated with each financial account offered under the arrangements described in paragraphs (e) and (f) of this section, as well as a URL for the terms and conditions of each account. For each account, if an institution by July 1, 2017 follows the format, content, and update requirements specified by the Secretary in a notice published in the FEDERAL REGISTER following consultation with the Bureau of Consumer Financial Protection, it will be in compliance with the requirements of this

paragraph with respect to the major features and assessed fees associated with the account; and

(*3*) May provide, for the benefit of the student, information about available financial accounts other than those described in paragraphs (e) and (f) of this section that have deposit insurance under 12 CFR part 330, or share insurance in accordance with 12 CFR part 745.

(ii) An institution that does not offer or use any financial accounts offered under paragraph (e) or (f) of this section may make direct payments to a student's or parent's existing financial account, or issue a check or disburse cash to the student or parent without establishing the selection process described in paragraph (d)(4)(i) of this section.

(e) *Tier one arrangement.* (1) In a Tier one (T1) arrangement—

(i) An institution located in a State has a contract with a third-party servicer under which the servicer performs one or more of the functions associated with processing direct payments of title IV, HEA program funds on behalf of the institution; and

(ii) The institution or third-party servicer makes payments to—

(A) One or more financial accounts that are offered to students under the contract;

(B) A financial account where information about the account is communicated directly to students by the third-party servicer, or the institution on behalf of or in conjunction with the third-party servicer; or

(C) A financial account where information about the account is communicated directly to students by an entity contracting with or affiliated with the third-party servicer.

(2) Under a T1 arrangement, the institution must—

(i) Ensure that the student's consent to open the financial account is obtained before an access device, or any representation of an access device, is sent to the student, except that an institution may send the student an access device that is a card provided to the student for institutional purposes, such as a student ID card, so long as the institution or financial institution obtains the student's consent before validating the device to enable the student to access the financial account;

(ii) Ensure that any personally identifiable information about a student that is shared with the third-party servicer before the student makes a selection under paragraph (d)(4)(i) of this section—

(A) Does not include information about the student, other than directory information under 34 CFR 99.3 that is disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37, beyond—

(*1*) A unique student identifier generated by the institution that does not include a Social Security number, in whole or in part;

(*2*) The disbursement amount;

(*3*) A password, PIN code, or other shared secret provided by the institution that is used to identify the student; or

(*4*) Any additional items specified by the Secretary in a notice published in the FEDERAL REGISTER;

(B) Is used solely for activities that support making direct payments to the student and not for any other purpose; and

(C) Is not shared with any other affiliate or entity except for the purpose described in paragraph (e)(2)(ii)(B) of this section;

(iii) Inform the student of the terms and conditions of the financial account, as required under paragraph (d)(4)(i)(B)(*2*) of this section, before the financial account is opened;

(iv) Ensure that the student—

(A) Has convenient access to the funds in the financial account through a surcharge-free national or regional Automated Teller Machine (ATM) network that has ATMs sufficient in number and housed and serviced such that title IV funds are reasonably available to students, including at the times the institution or its third-party servicer makes direct payments into the financial accounts of those students;

(B) Does not incur any cost—

(*1*) For opening the financial account or initially receiving an access device;

(*2*) Assessed by the institution, third-party servicer, or a financial institution associated with the third-party servicer, when the student conducts point-of-sale transactions in a State; and

(*3*) For conducting a balance inquiry or withdrawal of funds at an ATM in a State that belongs to the surcharge-free regional or national network;

(v) Ensure that—

(A) The financial account or access device is not marketed or portrayed as, or converted into, a credit card;

(B) No credit is extended or associated with the financial account, and no fee is charged to the student for any transaction or withdrawal that exceeds the balance in the financial account or on the access device, except that a transaction or withdrawal that exceeds the balance may be permitted only for an inadvertently authorized overdraft, so long as no fee is charged to the student for such inadvertently authorized overdraft; and

(C) The institution, third-party servicer, or third-party servicer's associated financial institution provides a student accountholder convenient access to title IV, HEA program funds in part and in full up to the account balance via domestic withdrawals and transfers without charge, during the student's entire period of enrollment following the date that such title IV, HEA program funds are deposited or transferred to the financial account;

(vi) No later than September 1, 2016, and then no later than 60 days following the most recently completed award year thereafter, disclose conspicuously on the institution's Web site the contract(s) establishing the T1 arrangement between the institution and third-party servicer or financial institution acting on behalf of the third-party servicer, as applicable, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities;

(vii) No later than September 1, 2017, and then no later than 60 days following the most recently completed award year thereafter, disclose conspicuously on the institution's Web site and in a format established by the Secretary—

(A) The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; and

(B) For any year in which the institution's enrolled students open 30 or more financial accounts under the T1 arrangement, the number of students who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

(viii) Provide to the Secretary an up-to-date URL for the contract and contract data as described in paragraph (e)(2)(vii) of this section for publication in a centralized database accessible to the public;

(ix) Ensure that the terms of the accounts offered pursuant to a T1 arrangement are not inconsistent with the best financial interests of the students opening them. The Secretary considers this requirement to be met if—

(A) The institution documents that it conducts reasonable due diligence reviews at least every two years to ascertain whether the fees imposed under the T1 arrangement are, considered as a whole, consistent with or below prevailing market rates; and

(B) All contracts for the marketing or offering of accounts pursuant to T1 arrangements to the institution's students make provision for termination of the arrangement by the institution based on complaints received from students or a determination by the institution under paragraph (e)(2)(ix)(A) of this section that the fees assessed under the T1 arrangement are not consistent with or are higher than prevailing market rates; and

(x) Take affirmative steps, by way of contractual arrangements with the third-party servicer as necessary, to ensure that requirements of this section are met with respect to all accounts offered pursuant to T1 arrangements.

(3) Except for paragraphs (e)(2)(ii)(B) and (C) of this section, the requirements of paragraph (e)(2) of this section no longer apply to a student who has an account described under paragraph (e)(1) of this section when the student is no longer enrolled at the institution and there are no pending title IV disbursements for that student, except that nothing in this paragraph (e)(3) should be construed to limit the

institution's responsibility to comply with paragraph (e)(2)(vii) of this section with respect to students enrolled during the award year for which the institution is reporting. To effectuate this provision, an institution may share information related to students' enrollment status with the servicer or entity that is party to the arrangement.

(f) *Tier two arrangement.* (1) In a Tier two (T2) arrangement, an institution located in a State has a contract with a financial institution, or entity that offers financial accounts through a financial institution, under which financial accounts are offered and marketed directly to students enrolled at the institution.

(2) Under a T2 arrangement, an institution must—

(i) Comply with the requirements described in paragraphs (d)(4)(i), (f)(4)(i) through (iii), (vii), and (ix) through (xi), and (f)(5) of this section if it has at least one student with a title IV credit balance in each of the three most recently completed award years, but has less than the number and percentage of students with credit balances as described in paragraphs (f)(2)(ii)(A) and (B) of this section; and

(ii) Comply with the requirements specified in paragraphs (d)(4)(i), (f)(4), and (f)(5) of this section if, for the three most recently completed award years—

(A) An average of 500 or more of its students had a title IV credit balance; or

(B) An average of five percent or more of the students enrolled at the institution had a title IV credit balance. The institution calculates this percentage as follows:

The average number of students with credit balances for the three most recently completed award years

The average number of students enrolled at the institution at any time during the three most recently completed award years.

(3) The Secretary considers that a financial account is marketed directly if—

(i) The institution communicates information directly to its students about the financial account and how it may be opened;

(ii) The financial account or access device is cobranded with the institution's name, logo, mascot, or other affiliation and is marketed principally to students at the institution; or

(iii) A card or tool that is provided to the student for institutional purposes, such as a student ID card, is validated, enabling the student to use the device to access a financial account.

(4) Under a T2 arrangement, the institution must—

(i) Ensure that the student's consent to open the financial account has been obtained before—

(A) The institution provides, or permits a third-party servicer to provide, any personally identifiable information about the student to the financial institution or its agents, other than directory information under 34 CFR 99.3 that is disclosed pursuant to 34 CFR 99.31(a)(11) and 99.37;

(B) An access device, or any representation of an access device, is sent to the student, except that an institution may send the student an access device that is a card provided to the student for institutional purposes, such as a student ID card, so long as the institution or financial institution obtains the student's consent before validating the device to enable the student to access the financial account;

(ii) Inform the student of the terms and conditions of the financial account as required under paragraph (d)(4)(i)(B)(*2*) of this section, before the financial account is opened;

(iii) No later than September 1, 2016, and then no later than 60 days following the most recently completed award year thereafter—

(A) Disclose conspicuously on the institution's Web site the contract(s) establishing the T2 arrangement between the institution and financial institution in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities; and

(B) Provide to the Secretary an up-to-date URL for the contract for publication in a centralized database accessible to the public;

(iv) No later than September 1, 2017, and then no later than 60 days following the most recently completed award year thereafter, disclose conspicuously on the institution's Web site and in a format established by the Secretary—

(A) The total consideration for the most recently completed award year, monetary and non-monetary, paid or received by the parties under the terms of the contract; and

(B) For any year in which the institution's enrolled students open 30 or more financial accounts marketed under the T2 arrangement, the number of students who had financial accounts under the contract at any time during the most recently completed award year, and the mean and median of the actual costs incurred by those account holders;

(v) Ensure that the items under paragraph (f)(4)(iv) of this section are posted at the URL that is sent to the Secretary under paragraph (f)(4)(iii)(B) of this section for publication in a centralized database accessible to the public;

(vi) Ensure that the student accountholder can execute balance inquiries and access funds deposited in the financial accounts through surcharge-free in-network ATMs sufficient in number and housed and serviced such that the funds are reasonably available to the accountholder, including at the times the institution or its third-party servicer makes direct payments into them;

(vii) Ensure that the financial accounts are not marketed or portrayed as, or converted into, credit cards;

(viii) Ensure that the terms of the accounts offered pursuant to a T2 arrangement are not inconsistent with the best financial interests of the students opening them. The Secretary considers this requirement to be met if—

(A) The institution documents that it conducts reasonable due diligence reviews at least every two years to ascertain whether the fees imposed under the T2 arrangement are, considered as a whole, consistent with or below prevailing market rates; and

(B) All contracts for the marketing or offering of accounts pursuant to T2 arrangements to the institution's students make provision for termination of the arrangement by the institution based on complaints received from students or a determination by the institution under paragraph (f)(4)(viii)(A) of this section that the fees assessed under the T2 arrangement are not consistent with or are above prevailing market rates;

(ix) Take affirmative steps, by way of contractual arrangements with the financial institution as necessary, to ensure that requirements of this section are met with respect to all accounts offered pursuant to T2 arrangements; and

(x) Ensure students incur no cost for opening the account or initially receiving or validating an access device.

(xi) If the institution enters into an agreement for the cobranding of a financial account with the institution's name, logo, mascot, or other affiliation but maintains that the account is not marketed principally to its enrolled students and is not otherwise marketed directly within the meaning of paragraph (f)(3) of this section, the institution must retain the cobranding contract and other documentation it believes establishes that the account is not marketed directly to its enrolled students, including documentation that the cobranded financial account or access device is offered generally to the public.

(xii) Institutions falling below the thresholds described in paragraph (f)(2) of this section are encouraged to comply voluntarily with the applicable provisions of paragraphs (f)(4) and (f)(5) of this section.

(5) The requirements of paragraph (f)(4) of this section no longer apply with respect to a student who has an account described under paragraph (f)(1) of this section when the student is no longer enrolled at the institution and there are no pending title IV disbursements, except that nothing in this paragraph should be construed to limit the institution's responsibility to comply with paragraph (f)(4)(iv) of this section with respect to students enrolled during the award year for which the institution is reporting. To effectuate this provision, an institution

may share information related to students' enrollment status with the financial institution or entity that is party to the arrangement.

(g) *Ownership of financial accounts opened through outreach to an institution's students.* Any financial account offered or marketed pursuant to an arrangement described in paragraph (e) or (f) of this section must meet the requirements of 31 CFR 210.5(a) or (b)(5), as applicable.

(h) *Title IV, HEA credit balances.* (1) A title IV, HEA credit balance occurs whenever the amount of title IV, HEA program funds credited to a student's ledger account for a payment period exceeds the amount assessed the student for allowable charges associated with that payment period as provided under paragraph (c) of this section.

(2) A title IV, HEA credit balance must be paid directly to the student or parent as soon as possible, but no later than—

(i) Fourteen (14) days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(ii) Fourteen (14) days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(i) *Early disbursements.* (1) Except as provided in paragraph (i)(2) of this section, the earliest an institution may disburse title IV, HEA funds to an eligible student or parent is—

(i) If the student is enrolled in a credit-hour program offered in terms that are substantially equal in length, 10 days before the first day of classes of a payment period; or

(ii) If the student is enrolled in a credit-hour program offered in terms that are not substantially equal in length, a non-term credit-hour program, or a clock-hour program, the later of—

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

(B) The date the student completed the previous payment period for which he or she received title IV, HEA program funds.

(2) An institution may not—

(i) Make an early disbursement of a Direct Loan to a first-year, first-time borrower who is subject to the 30-day delayed disbursement requirements in 34 CFR 685.303(b)(5). This restriction does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(5)(i)(A) or (B); or

(ii) Compensate a student employed under the FWS program until the student earns that compensation by performing work, as provided in 34 CFR 675.16(a)(5).

(j) *Late disbursements*—(1) *Ineligible student.* For purposes of this paragraph (j), an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that—

(i) For a Direct Loan, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or

(ii) For an award under the Federal Pell Grant, FSEOG, Federal Perkins Loan, Iraq-Afghanistan Service Grant, and TEACH Grant programs, the student is no longer enrolled at the institution for the award year.

(2) *Conditions for a late disbursement.* Except as limited under paragraph (j)(4) of this section, a student who becomes ineligible, as described in paragraph (j)(1) of this section, qualifies for a late disbursement (and the parent qualifies for a parent Direct PLUS Loan disbursement) if, before the date the student became ineligible—

(i) The Secretary processed a SAR or ISIR with an official expected family contribution for the student for the relevant award year; and

(ii)(A) For a loan made under the Direct Loan program or for an award made under the TEACH Grant program, the institution originated the loan or award; or

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) *Making a late disbursement.* Provided that the conditions described in paragraph (j)(2) of this section are satisfied—

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under § 668.22(a)(4)

in accordance with the provisions of § 668.22(a)(5);

(ii) If the student completed the payment period or period of enrollment, the institution must provide the student or parent the choice to receive the amount of title IV, HEA program funds that the student or parent was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's ledger account as provided in paragraph (c) of this section, but must pay or offer any remaining amount to the student or parent; or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the Direct Loan program to pay for educational costs that the institution determines the student incurred for the period in which the student or parent was eligible.

(4) *Limitations.* (i) An institution may not make a late disbursement later than 180 days after the date the institution determines that the student withdrew, as provided in § 668.22, or for a student who did not withdraw, 180 days after the date the student otherwise became ineligible, pursuant to paragraph (j)(1) of this section.

(ii) An institution may not make a late second or subsequent disbursement of a loan under the Direct Loan program unless the student successfully completed the period of enrollment for which the loan was intended.

(iii) An institution may not make a late disbursement of a Direct Loan if the student was a first-year, first-time borrower as described in 34 CFR 685.303(b)(5) unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under 34 CFR 685.303(b)(5)(i)(A) or (B).

(iv) An institution may not make a late disbursement of any title IV, HEA program assistance unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the FEDERAL REGISTER.

(k) *Retroactive payments.* If an institution did not make a disbursement to an enrolled student for a payment period the student completed (for example, because of an administrative delay or because the student's ISIR was not available until a subsequent payment period), the institution may pay the student for all prior payment periods in the current award year or loan period for which the student was eligible. For Pell Grant payments under this paragraph (k), the student's enrollment status must be determined according to work already completed, as required by 34 CFR 690.76(b).

(l) *Returning funds.* (1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary any title IV, HEA program funds, except FWS program funds, that it attempts to disburse directly to a student or parent that are not received by the student or parent. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursement.

(2) If an EFT to a student's or parent's financial account is rejected, or a check to a student or parent is returned, the institution may make additional attempts to disburse the funds, provided that those attempts are made not later than 45 days after the EFT was rejected or the check returned. In cases where the institution does not make another attempt, the funds must be returned to the Secretary before the end of this 45-day period.

(3) If a check sent to a student or parent is not returned to the institution but is not cashed, the institution must return the funds to the Secretary no later than 240 days after the date it issued the check.

(m) *Provisions for books and supplies.* (1) An institution must provide a way for a student who is eligible for title IV, HEA program funds to obtain or purchase, by the seventh day of a payment period, the books and supplies applicable to the payment period if, 10 days before the beginning of the payment period—

(i) The institution could disburse the title IV, HEA program funds for which the student is eligible; and

(ii) Presuming the funds were disbursed, the student would have a credit balance under paragraph (h) of this section.

(2) The amount the institution provides to the student to obtain or purchase books and supplies is the lesser of the presumed credit balance under this paragraph or the amount needed by the student, as determined by the institution.

(3) The institution must have a policy under which the student may opt out of the way the institution provides for the student to obtain or purchase books and supplies under this paragraph (m). A student who opts out under this paragraph is considered to also opt out under paragraph (c)(2)(i)(C) of this section;

(4) If a student uses the method provided by the institution to obtain or purchase books and supplies under this paragraph, the student is considered to have authorized the use of title IV, HEA funds and the institution does not need to obtain a written authorization under paragraph (c)(1)(ii) of this section and § 668.165(b) for this purpose.

[80 FR 67194, Oct. 30, 2015, as amended at 81 FR 20251, Apr. 7, 2016]

§ 668.165 Notices and authorizations.

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

(2) Except in the case of a post-withdrawal disbursement made in accordance with § 668.22(a)(5), if an institution credits a student ledger account with Direct Loan, Federal Perkins Loan, or TEACH Grant program funds, the institution must notify the student or parent of—

(i) The anticipated date and amount of the disbursement;

(ii) The student's or parent's right to cancel all or a portion of that loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement and have the loan proceeds or TEACH Grant proceeds returned to the Secretary; and

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

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

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

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

(4)(i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan, loan disbursement, TEACH Grant, or TEACH Grant disbursement.

(ii) The institution must return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both, in accordance with program regulations provided that the institution receives a loan or TEACH Grant cancellation request—

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

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

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii) of this section, the institution may return the loan or TEACH Grant proceeds, cancel the loan or TEACH Grant, or do both,

in accordance with program regulations.

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

(6) For purposes of this section—

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for the period of enrollment before the institution credits the student's account with those loan funds. The process under which the TEACH Grant program is administered is considered to be an affirmative confirmation process; and

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

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

(i) Use the student's or parent's title IV, HEA program funds to pay for charges described in § 668.164(c)(1)(ii) or (c)(3)(i)(B) that are included in that authorization; and

(ii) Unless the Secretary provides funds to the institution under the reimbursement payment method or the heightened cash monitoring payment method described in § 668.162(c) or (d), respectively, hold on behalf of the student or parent any title IV, HEA program funds that would otherwise be paid directly to the student or parent as a credit balance under § 668.164(h).

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

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

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

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

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

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

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under paragraph (a)(4) of this section, the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

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

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

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

(ii) Maintain, at all times, cash in its depository account in an amount at least equal to the amount of funds the institution holds on behalf of the student or the parent; and

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

[80 FR 67194, Oct. 30, 2015, as amended at 81 FR 20251, Apr. 7, 2016]

§ 668.166 Excess cash.

(a) *General.* The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan program funds, that an institution does not disburse to students by the end of the third business day following the date the institution—

(1) Received those funds from the Secretary; or

(2) Deposited or transferred to its depository account previously disbursed title IV, HEA program funds, such as

those resulting from award adjustments, recoveries, or cancellations.

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

(c) *Consequences for maintaining excess cash.* Upon a finding that an institution maintained excess cash for any amount or time over that allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to—

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

(2) Providing funds to the institution under the reimbursement payment method or heightened cash monitoring payment method described in § 668.162(c) and (d), respectively.

[80 FR 67194, Oct. 30, 2015, as amended at 81 FR 20251, Apr. 7, 2016]

§ 668.167 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the section or the application of its provisions to any person, act, or practice shall not be affected thereby.

Subpart L—Financial Responsibility

SOURCE: 62 FR 62877, Nov. 25, 1997, unless otherwise noted.

§ 668.171 General.

(a) *Purpose.* To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution's ability to—

(1) Provide the services described in its official publications and statements;

(2) Meet all of its financial obligations; and

(3) Provide the administrative resources necessary to comply with title IV, HEA program requirements.

(b) *General standards of financial responsibility.* Except as provided under paragraphs (e) and (f) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that—

(1) The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under § 668.172 and appendices A and B to this subpart;

(2) The institution has sufficient cash reserves to make required returns of unearned title IV, HEA program funds, as provided under § 668.173;

(3) The institution is able to meet all of its financial obligations and otherwise provide the administrative resources necessary to comply with title IV, HEA program requirements. An institution may not be able to meet its financial or administrative obligations if it is subject to an action or event described in paragraph (c), (d), (e), (f), or (g) of this section. The Secretary considers those actions or events in determining whether the institution is financially responsible only if they occur on or after July 1, 2017; and

(4) The institution or persons affiliated with the institution are not subject to a condition of past performance under § 668.174(a) or (b).

(c) *Debts, liabilities, and losses.* (1) Except as provided under paragraph (h)(3) of this section, an institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if, after the end of the fiscal year for which the Secretary has most recently calculated an institution's composite score, the institution is subject to one or more of the following actions or triggering events, and as a result of the actual or potential debts, liabilities, or losses that have stemmed or may stem from those actions or events, the institution's recalculated composite score is less than 1.0, as determined by the Secretary under paragraph (c)(2) of this section:

(i) *Debts and borrower defense-related lawsuits.* (A) The institution is required to pay any debt or incur any liability arising from a final judgment in a judicial proceeding or from an administrative proceeding or determination, or from a settlement; or

(B) The institution is being sued in an action brought on or after July 1, 2017 by a Federal or State authority for financial relief on claims related to the making of the Direct Loan for enrollment at the school or the provision of educational services and the suit has been pending for 120 days.

(ii) *Other litigation.* The institution is being sued in an action brought on or after July 1, 2017 that is not described in paragraph (c)(1)(i)(B) of this section and—

(A) The institution has filed a motion for summary judgment or summary disposition and that motion has been denied or the court has issued an order reserving judgment on the motion;

(B) The institution has not filed a motion for summary judgment or summary disposition by the deadline set for such motions by the court or agreement of the parties; or

(C) If the court did not set a deadline for filing a motion for summary judgment and the institution did not file such a motion, the court has set a pretrial conference date or trial date and the case is pending on the earlier of those two dates.

(iii) *Accrediting agency actions.* The institution was required by its accrediting agency to submit a teach-out plan, for a reason described in § 602.24(c)(1), that covers the closing of the institution or any of its branches or additional locations.

(iv) *Gainful employment.* As determined annually by the Secretary, the institution has gainful employment programs that, under § 668.403, could become ineligible based on their final D/E rates for the next award year.

(v) *Withdrawal of owner's equity.* For a proprietary institution whose composite score is less than 1.5, any withdrawal of owner's equity from the institution by any means, including by declaring a dividend, unless the transfer is to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated.

(2) *Recalculating the composite score*—(i) *General.* Unless the institution demonstrates to the satisfaction of the Secretary that the event or condition has had or will have no effect on the assets and liabilities of the institution under paragraph (g)(3)(iv) of this section, as specified in Appendix C of this subpart, the Secretary recognizes and accounts for the actual or potential losses associated with the actions or events under paragraph (c)(1) of this section and, based on that accounting, recalculates the institution's most recent composite score. The recalculation will occur regularly after associated actions or events are reported to the Secretary. The Secretary recalculates the composite score under this paragraph using the financial statements on which the institution's composite score has been calculated under § 668.172.

(ii) *Calculation of potential loss—debts and borrower defense-related lawsuits.* For a debt or a suit described in paragraph (c)(1)(i) of this section, the amount of loss is—

(A) The amount of debt;

(B) For a suit, the amount set by a court ruling, or, in the absence of a court ruling—

(*1*) The amount of relief claimed in the complaint;

(*2*) If the complaint demands no specific amount of relief, the amount stated in any final written demand issued by the agency to the institution prior to the suit or a lesser amount that the agency offers to accept in settlement of any financial demand in the suit; or

(*3*) If the agency stated no specific demand in the complaint, in a pre-filing demand, or in a written offer of settlement, the amount of tuition and fees received by the institution during the period, and for the program or location, described in the allegations in the complaint.

(iii) *Calculation of potential loss—other litigation.* For any suit described in paragraph (c)(1)(ii) of this section, the amount of loss is the amount set by a court ruling, or, in the absence of a court ruling—

(A) The amount of relief claimed in the complaint;

(B) If the complaint demands no specific amount of relief, the amount stated in any final written demand by the claimant to the institution prior to the suit or a lesser amount that the plaintiff offers to accept in settlement of any financial demand in the suit; or

(C) If the complainant stated no specific demand in the complaint, in a prefiling demand, or in a written offer of settlement, the amount of the claim as stated in a response to a discovery request, including an expert witness report.

(iv) *Calculation of potential loss—other events.* (A) For a closed location or institution, or the potential loss of eligibility for gainful employment programs, as described in paragraph (c)(1)(iii) or (iv), the amount of loss is the amount of title IV, HEA program funds the institution received in its most recently completed fiscal year for that location or institution, or for those GE programs.

(B) For the withdrawal of owner's equity, described in paragraph (c)(1)(v) of this section, the amount of loss is the amount transferred to any entity other than the institution.

(d) *Non-title IV revenue.* Except as provided under paragraph (h)(3) of this section, a proprietary institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if, for its most recently completed fiscal year, the institution did not derive at least 10 percent of its revenue from sources other than title IV, HEA program funds, as provided under § 668.28(c).

(e) *Publicly traded institutions.* Except as provided under paragraph (h)(3) of this section, a publicly traded institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if the institution is currently subject to one or more of the following actions or events:

(1) *SEC actions.* The SEC warns the institution that it may suspend trading on the institution's stock.

(2) *SEC reports.* The institution failed to file a required annual or quarterly report with the SEC within the time period prescribed for that report or by any extended due date under 17 CFR 240.12b–25.

(3) *Exchange actions.* The exchange on which the institution's stock is traded notifies the institution that it is not in compliance with exchange requirements, or its stock is delisted.

(f) *Cohort default rates.* Except as provided under paragraph (h)(3) of this section, an institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if the institution's two most recent official cohort default rates are 30 percent or greater, as determined under subpart N of this part, unless—

(1) The institution files a challenge, request for adjustment, or appeal under that subpart with respect to its rates for one or both of those fiscal years; and

(2) That challenge, request, or appeal remains pending, results in reducing below 30 percent the official cohort default rate for either or both years, or precludes the rates from either or both years from resulting in a loss of eligibility or provisional certification.

(g) *Discretionary factors or events.* Except as provided under paragraph (h)(3) of this section, an institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if the Secretary demonstrates that there is an event or condition that is reasonably likely to have a material adverse effect on the financial condition, business, or results of operations of the institution, including but not limited to whether—

(1) There is a significant fluctuation between consecutive award years, or a period of award years, in the amount of Direct Loan or Pell Grant funds, or a combination of those funds, received by the institution that cannot be accounted for by changes in those programs;

(2) The institution is cited by a State licensing or authorizing agency for failing State or agency requirements;

(3) The institution fails a financial stress test developed or adopted by the Secretary to evaluate whether the institution has sufficient capital to absorb losses that may be incurred as a result of adverse conditions and continue to meet its financial obligations to the Secretary and students;

(4) As calculated by the Secretary, the institution has high annual dropout rates;

(5) The institution is or was placed on probation or issued a show-cause order, or placed on an accreditation status that poses an equivalent or greater risk to its accreditation, by its accrediting agency for failing to meet one or more of the agency's standards;

(6)(i) The institution violated a provision or requirement in a loan agreement; and

(ii) As provided under the terms of a security or loan agreement between the institution and the creditor, a monetary or nonmonetary default or delinquency event occurs, or other events occur, that trigger, or enable the creditor to require or impose on the institution, an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees;

(7) The institution has pending claims for borrower relief discharge under § 685.206 or § 685.222; or

(8) The Secretary expects to receive a significant number of claims for borrower relief discharge under § 685.206 or § 685.222 as a result of a lawsuit, settlement, judgement, or finding from a State or Federal administrative proceeding.

(h) *Reporting requirements.* (1) In accordance with procedures established by the Secretary, an institution must notify the Secretary of any of the following actions or events identified in paragraphs (c) through (g) of this section no later than—

(i) For lawsuits and for other actions or events described in paragraph (c)(1)(i) of this section—

(A) For lawsuits, 10 days after the institution is served with the complaint and 10 days after the suit has been pending for 120 days; and

(B) For debts arising from lawsuits and for other actions or events, 10 days after a payment was required or a liability was incurred.

(ii) For lawsuits described in paragraph (c)(1)(ii) of this section—

(A) Ten days after the institution is served with the complaint;

(B) Ten days after the court sets the dates for the earliest of the events described in paragraph (c)(1)(ii) of this section, provided that, if the deadline is set by procedural rules, notice of the applicable deadline must be included with notice of the service of the complaint; and

(C) Ten days after the earliest of the applicable events occurs;

(iii) For an accrediting agency action described in paragraph (c)(1)(iii) of this section, 10 days after the institution is notified by its accrediting agency that it must submit a teach-out plan;

(iv) For a withdrawal of owner's equity described in paragraph (c)(1)(v) of this section, 10 days after the withdrawal is made;

(v) For the non-title IV revenue provision in paragraph (d) of this section, 45 days after the end of the institution's fiscal year, as provided in § 668.28(c)(3);

(vi) For the SEC and stock exchange provisions for publicly traded institutions in paragraph (e), 10 days after the SEC or exchange warns, notifies, or takes an action against the institution, or 10 days after any extension granted by the SEC;

(vii) For State or agency actions in paragraph (g)(2) of this section, 10 days after the institution is cited for violating a State or agency requirement;

(viii) For probation or show cause actions under paragraph (g)(5) of this section, 10 days after the institution's accrediting agency places the institution on that status; or

(ix) For the loan agreement provisions in paragraph (g)(6) of this section, 10 days after a loan violation occurs, the creditor waives the violation, or the creditor imposes sanctions or penalties in exchange or as a result of the waiver.

(2) The Secretary may take an administrative action under paragraph (k) of this section against the institution if it fails to provide timely notice under this paragraph (h).

(3) In its notice to the Secretary, the institution may demonstrate that—

(i) For a suit by a Federal or State agency described in paragraph (c)(1)(i)(B) of this section, the amount claimed in the complaint or determined under paragraph (c)(2)(ii) of this section exceeds the potential recovery

because the allegations in the complaint, if accepted as true, and the claims asserted, if fully successful, cannot produce relief in the amount claimed or, if no amount was claimed, the amount deemed under paragraph (c)(2)(ii) because they pertain to a period, program, or location for which the full recovery possible is a lesser amount;

(ii) The reported withdrawal of owner's equity under paragraph (c)(1)(v) of this section was used exclusively to meet tax liabilities of the institution or its owners for income derived from the institution;

(iii) The reported violation of a provision or requirement in a loan agreement under paragraph (g)(6) of this section was waived by the creditor. However, if the creditor imposes additional constraints or requirements as a condition of waiving the violation, or imposes penalties or requirements under paragraph (g)(6)(ii) of this section, the institution must identify and describe those penalties, constraints, or requirements and may demonstrate that complying with those actions will not adversely affect the institution's ability to meet its current and future financial obligations; or

(iv) The action or event reported under this paragraph (h) no longer exists or has been resolved or the institution has insurance that will cover part or all of the debts and liabilities that arise at any time from that action or event.

(i) *Public institutions.* (1) The Secretary considers a domestic public institution to be financially responsible if the institution—

(i)(A) Notifies the Secretary that it is designated as a public institution by the State, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and

(B) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and

(ii) Is not subject to a condition of past performance under § 668.174.

(2) The Secretary considers a foreign public institution to be financially responsible if the institution—

(i)(A) Notifies the Secretary that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and

(B) Provides documentation from an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity; and

(ii) Is not subject to a condition of past performance under § 668.174.

(j) *Audit opinions.* Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if, in the institution's audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimed opinion, or the auditor expressed doubt about the continued existence of the institution as a going concern, unless the Secretary determines that a qualified or disclaimed opinion does not significantly bear on the institution's financial condition.

(k) *Administrative actions.* If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in § 668.175, or the institution does not submit its financial and compliance audits by the date and in the manner required under § 668.23, the Secretary may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; or

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in § 668.13(d).

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

[81 FR 76072, Nov. 1, 2016]

§ 668.172 Financial ratios.

(a) *Appendices A and B, ratio methodology.* As provided under appendices A and B to this subpart, the Secretary

determines an institution's composite score by—

(1) Calculating the result of its Primary Reserve, Equity, and Net Income ratios, as described under paragraph (b) of this section;

(2) Calculating the strength factor score for each of those ratios by using the corresponding algorithm;

(3) Calculating the weighted score for each ratio by multiplying the strength factor score by its corresponding weighting percentage;

(4) Summing the resulting weighted scores to arrive at the composite score; and

(5) Rounding the composite score to one digit after the decimal point.

(b) *Ratios.* The Primary Reserve, Equity, and Net Income ratios are defined under appendix A for proprietary institutions, and under appendix B for private non-profit institutions.

(1) The ratios for proprietary institutions are:

For proprietary institutions:

$$\text{Primary Reserve ratio} = \frac{\text{Adjusted Equity}}{\text{Total Expenses}}$$

$$\text{Equity ratio} = \frac{\text{Modified Equity}}{\text{Modified Assets}}$$

$$\text{Net Income ratio} = \frac{\text{Income Before Taxes}}{\text{Total Revenues}}$$

(2) The ratios for private non-profit institutions are:

$$\text{Primary Reserve ratio} = \frac{\text{Expendable Net Assets}}{\text{Total Expenses}}$$

$$\text{Equity Ratio} = \frac{\text{Modified Net Assets}}{\text{Modified Assets}}$$

$$\text{Net Income ratio} = \frac{\text{Change in Unrestricted Net Assets}}{\text{Total Unrestricted Revenues}}$$

(c) *Excluded items.* In calculating an institution's ratios, the Secretary—

(1) Generally excludes extraordinary gains or losses, income or losses from discontinued operations, prior period adjustments, the cumulative effect of changes in accounting principles, and the effect of changes in accounting estimates;

(2) May include or exclude the effects of questionable accounting treatments, such as excessive capitalization of marketing costs;

(3) Excludes all unsecured or uncollateralized related-party receivables;

(4) Excludes all intangible assets defined as intangible in accordance with generally accepted accounting principles; and

(5) Excludes from the ratio calculations Federal funds provided to an institution by the Secretary under program authorized by the HEA only if—

(i) In the notes to the institution's audited financial statement, or as a separate attestation, the auditor discloses by name and CFDA number, the amount of HEA program funds reported as expenses in the Statement of Activities for the fiscal year covered by that audit or attestation; and

(ii) The institution's composite score, as determined by the Secretary, is less than 1.5 before the reported expenses arising from those HEA funds are excluded from the ratio calculations.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, July 28, 1998; 65 FR 65637, Nov. 1, 2000]

§ 668.173 Refund reserve standards.

(a) *General.* The Secretary considers that an institution has sufficient cash reserves, as required under § 668.171(b)(2), if the institution—

(1) Satisfies the requirements for a public institution under § 668.171(c)(1);

(2) Is located in a State that has a tuition recovery fund approved by the Secretary and the institution contributes to that fund; or

(3) Returns, in a timely manner as described in paragraph (b) of this section, unearned title IV, HEA program funds that it is responsible for returning under the provisions of § 668.22 for a student that withdrew from the institution.

(b) *Timely return of title IV, HEA program funds.* In accordance with procedures established by the Secretary or FFEL Program lender, an institution returns unearned title IV, HEA program funds timely if—

(1) The institution deposits or transfers the funds into the bank account it maintains under § 668.163 no later than 45 days after the date it determines that the student withdrew;

(2) The institution initiates an electronic funds transfer (EFT) no later than 45 days after the date it determines that the student withdrew;

(3) The institution initiates an electronic transaction, no later than 45 days after the date it determines that the student withdrew, that informs a FFEL lender to adjust the borrower's loan account for the amount returned; or

(4) The institution issues a check no later than 45 days after the date it determines that the student withdrew. An institution does not satisfy this requirement if—

(i) The institution's records show that the check was issued more than 45 days after the date the institution determined that the student withdrew; or

(ii) The date on the cancelled check shows that the bank used by the Secretary or FFEL Program lender endorsed that check more than 60 days after the date the institution determined that the student withdrew.

(c) *Compliance thresholds.* (1) An institution does not comply with the reserve standard under § 668.173(a)(3) if, in a compliance audit conducted under § 668.23, an audit conducted by the Office of the Inspector General, or a program review conducted by the Department or guaranty agency, the auditor or reviewer finds—

(i) In the sample of student records audited or reviewed that the institution did not return unearned title IV, HEA program funds within the timeframes described in paragraph (b) of this section for 5% or more of the students in the sample. (For purposes of determining this percentage, the sample includes only students for whom the institution was required to return unearned funds during its most recently completed fiscal year.); or

(ii) A material weakness or reportable condition in the institution's report on internal controls relating to the return of unearned title IV, HEA program funds.

(2) The Secretary does not consider an institution to be out of compliance with the reserve standard under § 668.173(a)(3) if the institution is cited in any audit or review report because it did not return unearned funds in a timely manner for one or two students, or for less than 5% of the students in the sample referred to in paragraph (c)(1)(i) of this section.

(d) *Letter of credit.* (1) Except as provided under paragraph (e)(1) of this section, an institution that can satisfy the reserve standard only under paragraph (a)(3) of this section, must submit an irrevocable letter of credit acceptable and payable to the Secretary if a finding in an audit or review shows that the institution exceeded the compliance thresholds in paragraph (c) of this section for either of its two most recently completed fiscal years.

(2) The amount of the letter of credit required under paragraph (d)(1) of this section is 25 percent of the total amount of unearned title IV, HEA program funds that the institution was required to return under § 668.22 during the institution's most recently completed fiscal year.

(3) An institution that is subject to paragraph (d)(1) of this section must submit to the Secretary a letter of credit no later than 30 days after the earlier of the date that—

(i) The institution is required to submit its compliance audit;

(ii) The Office of the Inspector General issues a final audit report;

(iii) The designated department official issues a final program review determination;

(iv) The Department issues a preliminary program review report or draft audit report, or a guaranty agency issues a preliminary report showing that the institution did not return unearned funds for more than 10% of the sampled students; or

(v) The Secretary sends a written notice to the institution requesting the letter of credit that explains why the institution has failed to return unearned funds in a timely manner.

(e) *Exceptions.* With regard to the letter of credit described in paragraph (d) of this section—

(1) An institution does not have to submit the letter of credit if the amount calculated under paragraph (d)(2) of this section is less than $5,000 and the institution can demonstrate that it has cash reserves of at least $5,000 available at all times.

(2) An institution may delay submitting the letter of credit and request the Secretary to reconsider a finding made in its most recent audit or review report that it failed to return unearned title IV, HEA program funds in a timely manner if—

(i)(A) The institution submits documents showing that the unearned title IV, HEA program funds were not returned in a timely manner solely because of exceptional circumstances beyond the institution's control and that the institution would not have exceeded the compliance thresholds under paragraph (c)(1) of this section had it not been for these exceptional circumstances; or

(B) The institution submits documents showing that it did not fail to make timely refunds as provided under paragraphs (b) and (c) of this section; and

(ii) The institution's request, along with the documents described in paragraph (e)(2)(i) of this section, is submitted to the Secretary no later than the date it would otherwise be required to submit a letter of credit under paragraph (d)(3).

(3) If the Secretary denies the institution's request under paragraph (e)(2) of this section, the Secretary notifies the institution of the date it must submit the letter of credit.

(f) *State tuition recovery funds.* In determining whether to approve a State's tuition recovery fund, the Secretary considers the extent to which that fund—

(1) Provides refunds to both in-State and out-of-State students;

(2) Allocates all refunds in accordance with the order required under § 668.22; and

(3) Provides a reliable mechanism for the State to replenish the fund should any claims arise that deplete the fund's assets.

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

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

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, July 28, 1998; 64 FR 59042, Nov. 1, 1999; 67 FR 67074, Nov. 1, 2003; 71 FR 45696, Aug. 9, 2006]

§ 668.174 Past performance.

(a) *Past performance of an institution.* An institution is not financially responsible if the institution—

(1) Has been limited, suspended, terminated, or entered into a settlement agreement to resolve a limitation, suspension, or termination action initiated by the Secretary or a guaranty agency, as defined in 34 CFR part 682, within the preceding five years;

(2) In either of its two most recent compliance audits had an audit finding, or in a report issued by the Secretary had a program review finding for its current fiscal year or either of its preceding two fiscal years, that resulted

in the institution's being required to repay an amount greater than 5 percent of the funds that the institution received under the title IV, HEA programs during the year covered by that audit or program review;

(3) Has been cited during the preceding five years for failure to submit in a timely fashion acceptable compliance and financial statement audits required under this part, or acceptable audit reports required under the individual title IV, HEA program regulations; or

(4) Has failed to resolve satisfactorily any compliance problems identified in audit or program review reports based upon a final decision of the Secretary issued pursuant to subpart G or H of this part.

(b) *Past performance of persons affiliated with an institution.* (1)(i) Except as provided under paragraph (b)(2) of this section, an institution is not financially responsible if a person who exercises substantial control over the institution, as described under 34 CFR 600.30, or any member or members of that person's family, alone or together—

(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a title IV, HEA program requirement; or

(B) Owes a liability for a violation of a title IV, HEA program requirement; and

(ii) That person, family member, institution, or servicer does not demonstrate that the liability is being repaid in accordance with an agreement with the Secretary.

(2) The Secretary may determine that an institution is financially responsible, even if the institution is not otherwise financially responsible under paragraph (b)(1) of this section, if—

(i) The institution notifies the Secretary, within the time permitted and in the manner provided under 34 CFR 600.30, that the person referenced in paragraph (b)(1) of this section exercises substantial control over the institution; and

(ii) The person referenced in paragraph (b)(1) of this section repaid to the Secretary a portion of the applicable liability, and the portion repaid equals or exceeds the greater of—

(A) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person's family, either alone or in combination with one another;

(B) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or members of the person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(C) Twenty-five percent, if the person or any member of the person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution that owes the liability; or

(iii) The applicable liability described in paragraph (b)(1) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(iv) The institution demonstrates to the satisfaction of the Secretary why—

(A) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(B) The person who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

(c) *Ownership interest.* (1) An ownership interest is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, an institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation. The term ''ownership interest'' includes, but is not limited to—

(i) An interest as tenant in common, joint tenant, or tenant by the entireties;

(ii) A partnership; and

(iii) An interest in a trust.

(2) The term ''ownership interest'' does not include any share of the ownership or control of, or any right to share in the proceeds of the operation of a profit-sharing plan, provided that all employees are covered by the plan.

(3) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer if the person—

(i) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(ii) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(iii) Represents, either alone or together with other persons under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(iv) Is a member of the board of directors, a general partner, the chief executive officer, or other executive officer of—

(A) The institution or servicer; or

(B) An entity that holds at least a 25 percent ownership interest in the institution or servicer.

(4) ''Family member'' is defined in § 600.21(f) of this chapter.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, 40349, July 28, 1998; 67 FR 67075, Nov. 1, 2002]

§ 668.175 Alternative standards and requirements.

(a) *General*. An institution that is not financially responsible under the general standards and provisions in § 668.171, may begin or continue to participate in the title IV, HEA programs by qualifying under an alternate standard set forth in this section.

(b) *Letter of credit alternative for new institutions*. A new institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5, qualifies as a financially responsible institution by submitting an irrevocable letter of credit, that is acceptable and payable to the Secretary, for an amount equal to at least one-half of the amount of title IV, HEA program funds that the Secretary determines the institution will receive during its initial year of participation. A new institution is an institution that seeks to participate for the first time in the title IV, HEA programs.

(c) *Letter of credit alternative for participating institutions*. A participating institution that is not financially responsible either because it does not satisfy one or more of the standards of financial responsibility under § 668.171(b) through (g), or because of an audit opinion described under § 668.171(j), qualifies as a financially responsible institution by submitting an irrevocable letter of credit or other form of financial protection specified by the Secretary in a notice published in the FEDERAL REGISTER, that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than one-half of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.

(d) *Zone alternative*. (1) A participating institution that is not financially responsible solely because the Secretary determines that its composite score under § 668.172 is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the Secretary determines that the institution qualifies under this alternative.

(i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statement for its most recently completed fiscal year, the Secretary determines that its composite score is in the range from 1.0 to 1.4; and

(B) An institution continues to qualify under this alternative if, based on the institution's audited financial statement for each of its subsequent two fiscal years, the Secretary determines that the institution's composite score is in the range from 1.0 to 1.4.

(ii) An institution that qualified under this alternative for three consecutive years, or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Secretary.

(2) Under the zone alternative, the Secretary—

(i) Requires the institution to make disbursements to eligible students and parents, and to otherwise comply with the provisions, under either the heightened cash monitoring or reimbursement payment method described in § 668.162;

(ii) Requires the institution to provide timely information regarding any of the following oversight and financial events—

(A) Any event that causes the institution, or related entity as defined in Accounting Standards Codification (ASC) 850, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement; or

(B) Any losses that are unusual in nature or infrequently occur, or both, as defined in accordance with Accounting Standards Update (ASU) No. 2015–01 and ASC 225;

(iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under § 668.23(a)(4); and

(iv) May require the institution to provide information about its current operations and future plans.

(3) Under the zone alternative, the institution must—

(i) For any oversight or financial event described in paragraph (d)(2)(ii) of this section for which the institution is required to provide information, in accordance with procedures established by the Secretary, notify the Secretary no later than 10 days after that event occurs; and

(ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds.

(4) If an institution fails to comply with the requirements under paragraph (d)(2) or (3) of this section, the Secretary may determine that the institution no longer qualifies under this alternative.

(e) [Reserved]

(f) *Provisional certification alternative.* (1) The Secretary may permit an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years if, as determined annually by the Secretary—

(i) The institution is not financially responsible because it does not satisfy the general standards under § 668.171(b)(1) or (3), its recalculated composite score under § 668.171(c)(2) is less than 1.0, is subject to an action or event under § 668.171(d), (e), (f),or (g) or because of an audit opinion described in § 668.171(i); or

(ii) The institution is not financially responsible because of a condition of past performance, as provided under § 668.174(a), and the institution demonstrates to the Secretary that it has satisfied or resolved that condition.

(2) Under this alternative, the institution must—

(i) Provide to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, agree to a set-aside under paragraph (h) of this section, or, at the Secretary's discretion, provide another form of financial protection specified by the Secretary in a notice published in the FEDERAL REGISTER, for an amount determined by the Secretary under paragraph (f)(4) of this section, except that this requirement does not apply to a public institution; and

(ii) Comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3).

(3) If at the end of the period for which the Secretary provisionally certified the institution, the institution is still not financially responsible, the Secretary—

(i) May permit the institution to participate under a provisional certification, but—

(A) May require the institution, or one or more persons or entities that exercise substantial control over the institution, as determined under § 668.174(b)(1) and (c), or both, to provide to the Secretary financial protection for an amount determined by the Secretary under paragraph (f)(4) of this section; and

(B) May require one or more of the persons or entities that exercise substantial control over the institution, as determined under § 668.174(b)(1) and (c), to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs; and

(ii) May permit the institution to continue to participate under a provisional certification but requires the institution to provide, or continue to provide, the financial protection resulting from an event described in § 668.171(c) through (g) until the institution meets the requirements of paragraph (f)(5) of this section.

(4)(i) The institution must provide to the Secretary the financial protection described under paragraph (f)(2)(i) in an amount that, together with the amount of any financial protection that the institution has already provided if that protection covers the period described in paragraph (f)(5) of this section, equals, for a composite score calculated under § 668.172, a composite score recalculated under § 668.171(c)(2), or for any other reason that the institution is not financially responsible—

(A) Ten percent of the total amount of title IV, HEA program funds received by the institution during its most recently completed fiscal year; and

(B) Any additional amount that the Secretary demonstrates is needed under paragraph (f)(4)(ii) of this section.

(ii) The Secretary determines the amount specified in paragraph (f)(4)(i)(B) of this section that must be provided by the institution in addition to the amount specified in paragraph (f)(4)(i)(A) of this section, and must ensure that the total amount of financial protection provided under paragraph (f)(4)(i) of this section is sufficient to fully cover any estimated losses. The Secretary may reduce the amount required under paragraph (f)(4)(i)(B) only if an institution demonstrates that this amount is unnecessary to protect, or is contrary to, the Federal interest.

(5) The Secretary maintains the full amount of the financial protection provided by the institution under paragraph (f)(4) of this section until the Secretary first determines that the institution has—

(i) A composite score of 1.0 or greater based on the review of the audited financial statements for the fiscal year in which all losses from any event described in § 668.171(c), (d), (e), (f), or (g) on which financial protection was required have been fully recognized; or

(ii) A recalculated composite score of 1.0 or greater, and any event or condition described in § 668.171(d), (e), (f), or (g) has ceased to exist.

(g) *Provisional certification alternative for persons or entities owing liabilities.* (1) The Secretary may permit an institution that is not financially responsible because the persons or entities that exercise substantial control over the institution owe a liability for a violation of a title IV, HEA program requirement, to participate in the title IV, HEA programs under a provisional certification only if—

(i)(A) The persons or entities that exercise substantial control, as determined under § 668.174(b)(1) and (c), repay or enter into an agreement with the Secretary to repay the applicable portion of that liability, as provided under § 668.174(b)(2)(ii); or

(B) The institution assumes that liability, and repays or enters into an agreement with the Secretary to repay that liability;

(ii) The institution satisfies the general standards and provisions of financial responsibility under § 668.171(b) and (d)(1), except that institution must demonstrate that it was current on its debt payments and has met all of its financial obligations, as required under § 668.171 (b)(3) and (b)(4), for its two most recent fiscal years; and

(iii) The institution submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program

funds received by the institution during its most recently completed fiscal year.

(2) Under this alternative, the Secretary—

(i) Requires the institution to comply with the provisions under the zone alternative, as provided under paragraph (d) (2) and (3) of this section;

(ii) May require the institution, or one or more persons or entities that exercise substantial control over the institution, or both, to submit to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution's participation in the title IV, HEA programs; and

(iii) May require one or more of the persons or entities that exercise substantial control over the institution to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs.

(h) *Set-aside*. If an institution does not provide a letter of credit or financial protection acceptable to the Secretary for the amount required under paragraph (d) or (f) of this section within 45 days of the Secretary's request, the Secretary offsets the amount of title IV, HEA program funds that an institution is eligible to receive in a manner that ensures that, no later than the end of a nine-month period, the total amount offset equals the amount of financial protection the institution would otherwise provide. The Secretary uses the funds to satisfy the debt and liabilities owed to the Secretary that are not otherwise paid directly by the institution, and provides to the institution any funds not used for this purpose during the period for which the financial protection was required, or provides the institution any remaining funds if the institution subsequently submits the financial protection originally required under paragraph (d) or (f) of this section.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1094 and 1099c)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, 40349, July 28, 1998; 81 FR 76075, Nov. 1, 2016]

§ 668.176 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice will not be affected thereby.

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

[81 FR 76076, Nov. 1, 2016]

APPENDIX A TO SUBPART L OF PART 668—RATIO METHODOLOGY FOR PROPRIETARY INSTITUTIONS

Section 1: Ratios and Ratio Terms

$$\text{Primary Reserve Ratio} = \frac{\text{Adjusted Equity}}{\text{Total Expenses}}$$

$$\text{Equity Ratio} = \frac{\text{Modified Equity}}{\text{Modified Assets}}$$

$$\text{Net Income Ratio} = \frac{\text{Income Before Taxes}}{\text{Total Revenues}}$$

Definitions:

Adjusted Equity = (total owner's equity) - (intangible assets) - (unsecured related-party receivables) - (net property, plant and equipment)* + (post-employment and retirement liabilities) + (all debt obtained for long-term purposes)**

Total Expenses excludes income tax, discontinued operations, extraordinary losses, or change in accounting principle.

Modified Equity = (total owner's equity) - (intangible assets) - (unsecured related-party receivables)

Modified Assets = (total assets) - (intangible assets) - (unsecured related-party receivables)

Income Before Taxes is taken directly from the audited financial statement

Total Pre-Tax Revenues = (total operating revenues) + (non-operating revenues and gains). Investment gains should be recorded net of investment losses. No revenues shown after income taxes (e.g., discontinued operations, extraordinary gains, or change in accounting principle) on the income statement should be included.

* The value of plant, property and equipment is net of accumulated depreciation, including capitalized lease assets.
** The value of all debt obtained for long-term purposes includes the short-term portion of the debt, up to the amount of net property, plant and equipment.

Section 2, Calculating the Ratios from the Balance Sheet and Income Statement

Balance Sheet

Line		
1	Cash	$ 190,000
2	Accounts Receivable	1,010,000
3	Prepaid Expenses	150,000
4	Inventories	130,000
5	Note Receivable from Affiliate	200,000
6	Investments	330,000
7	**Total Current Assets**	2,010,000
8	Property and Equipment, net	500,000
9	Amount Due from Owner	170,000
10	Goodwill	80,000
11	Organization Costs	70,000
12	Deposits	60,000
13	**Total Assets**	2,890,000
14	Accounts Payable	200,000
15	Accrued Expenses	330,000
16	Current Portion of Long-Term Debt	120,000
17	Deferred Revenue	650,000
18	**Total Current Liabilities**	1,300,000
19	Long-Term Debt, net of Current Portion	330,000
20	**Total Liabilities**	1,630,000
21	Contributed Capital	440,000
22	Retained Earnings	820,000
23	**Total Owner's Equity**	1,260,000
24	**Total Liabilities and Owner's Equity**	2,890,000

Statement of Income and Retained Earnings

Line		
25	Operating Income	$ 9,700,000
26	Non-Operating Income	300,000
27	**Total Income**	10,000,000
28	Cost of Goods Sold	6,800,000
29	Administrative Expenses	2,600,000
30	Depreciation Expense	60,000
31	Interest Expense	40,000
32	**Total Expenses**	9,500,000
33	Other: Gain on Sale of Investments	10,000
34	**Net Income Before Taxes**	510,000
35	Federal Income Taxes	153,000
36	**Net Income After Taxes**	357,000
37	Extraordinary Loss, net of tax	800,000
38	**Net Income**	(443,000)
39	Retained Earnings, beginning of year	1,263,000
22	**Retained Earnings, end of year**	820,000

Primary Reserve Ratio = (lines) $\frac{23\text{-}5\text{-}9\text{-}10\text{-}8+(16+19)^{*}}{32} = \frac{\$\ 760,000}{\$9,500,000} = 0.080$

Equity Ratio = (lines) $\frac{23\text{-}5\text{-}9\text{-}10}{13\text{-}5\text{-}9\text{-}10} = \frac{\$\ 810,000}{\$2,440,000} = 0.332$

Net Income Ratio = (lines) $\frac{34}{27+33} = \frac{\$\ 510,000}{\$10,010,000} = 0.051$

*Long-Term Debt (lines 16+19) cannot exceed Property and Equipment (line 8) in this formula

Section 3: Calculating the Composite Score

Step 1: Calculate the strength factor score for each ratio, by using the following algorithms:

	Example (for Proprietary institutions)
Primary Reserve strength factor score = 20 x* Primary Reserve ratio result:	20 x 0.080 = 1.600
Equity strength factor score = 6 x Equity ratio result:	6 x 0.332 = 1.992
Net Income strength factor score = 1 + (33.3 x Net Income ratio result):	1 + (33.3 x 0.051) = 2.698

If the strength factor score for any ratio is greater than or equal to 3, the strength factor score for that ratio is 3. If the strength factor score for any ratio is less than or equal to -1, the strength factor score for that ratio is -1.

Step 2: Calculate the weighted score for each ratio and calculate the composite score by adding the three weighted scores

Primary Reserve weighted score = 30% x Primary Reserve strength factor score:	0.30 x 1.600 = 0.480
Equity weighted score = 40% x Equity strength factor score:	0.40 x 1.992 = 0.797
Net Income weighted score = 30% x Net Income strength factor score:	0.30 x 2.698 = 0.809
Composite score = sum of all weighted scores:	0.480 + 0.797 + 0.809 = 2.086
Round the composite score to one digit after the decimal point to determine the final score:	2.1

* The symbol "x" denotes multiplication.

[62 FR 62882, Nov. 25, 1997. Redesignated at 65 FR 65650, Nov. 1, 2000]

APPENDIX B TO SUBPART L OF PART 668—RATIO METHODOLOGY FOR PRIVATE NON-PROFIT INSTITUTIONS

Section 1: Ratios and Ratio Terms

$$\text{Primary Reserve Ratio} = \frac{\text{Expendable Net Assets}}{\text{Total Expenses}}$$

$$\text{Equity Ratio} = \frac{\text{Modified Net Assets}}{\text{Modified Assets}}$$

$$\text{Net Income Ratio} = \frac{\text{Change in Unrestricted Net Assets}}{\text{Total Unrestricted Revenue}}$$

Definitions:

Expendable Net Assets = (unrestricted net assets) + (temporarily restricted net assets) - (annuities, term endowments, and life income funds that are temporarily restricted) - (intangible assets) - (net property, plant and equipment)* + (post-employment and retirement liabilities) + (all debt obtained for long-term purposes)** - (unsecured related-party receivables)

Total Expenses is total unrestricted expenses taken directly from the audited financial statement

Modified Net Assets = (unrestricted net assets) + (temporarily restricted net assets) + (permanently restricted net assets) - (intangible assets) - (unsecured related-party receivables)

Modified Assets = (total assets) - (intangible assets) - (unsecured related-party receivables)

Change in Unrestricted Net Assets is taken directly from the audited financial statement

Total Unrestricted Revenue is taken directly from the audited financial statement (This amount includes net assets released from restriction during the fiscal year)

* The value of plant, property and equipment is net of accumulated depreciation, including capitalized lease assets.
** The value of all debt obtained for long-term purposes includes the short-term portion of the debt, up to the amount of net property, plant and equipment.

Section 2, Calculating the Ratios from the Balance Sheet and Statement of Activities

Balance Sheet

Line		Total
1	Cash and Cash Equivalents	$ 1,000,000
2	Accounts Receivable	6,000,000
3	Prepaid Expenses	1,500,000
4	Inventories	500,000
5	Contributions Receivable	2,000,000
6	Student Loans Receivable	8,000,000
7	Investments	6,000,000
8	Property and Equipment, net	50,000,000
9	Bond Insurance Costs	720,000
10	Goodwill	500,000
11	Deposits	20,000
12	**Total Assets**	76,240,000
13	Line of Credit	$ 500,000
14	Accounts Payable	2,000,000
15	Accrued Expenses	3,500,000
16	Deferred Revenue	650,000
17	Post-Retirement Benefits Liability	6,600,000
18	Bonds Payable	36,000,000
19	**Total Liabilities**	49,250,000
20	**Unrestricted Net Assets**	15,190,000
21	Annuities	300,000
22	John Doe Scholarship Fund	2,500,000
23	**Total Temp. Restricted Net Assets**	2,800,000
24	**Permanent Restr. Net Assets**	9,000,000
25	**Total Net Assets**	26,990,000
26	**Total Liabilities & Net Assets**	76,240,000

Statement of Activities

Line	column: a	b Unrestricted	c Temporarily Restricted	d Permanently Restricted	Total
27	Tuition and Fees	$45,000,000			$45,000,000
28	Contributions	1,200,000	$ 300,000	$ 120,000	1,620,000
29	Auxiliary Enterprises	5,500,000			5,500,000
30	Net Assets Released from Restrictions	200,000			200,000
31	**Total Revenue**	51,900,000	300,000	120,000	52,320,000
32	Operating Expenses	38,000,000			38,000,000
33	Depreciation	5,000,000			5,000,000
34	Interest Expense	2,880,000			2,880,000
35	Auxiliary Enterprises	5,200,000			5,200,000
36	Non-Operating Expenses	900,000			900,000
37	Net Assets Released from Restrictions		200,000	---	200,000
38	**Total Expenses**	51,980,000	200,000	---	52,180,000
39	**Change in Net Assets**	(80,000)*	100,000	120,000	140,000
40	Net Assets at beginning of year	15,270,000	2,700,000	8,880,000	26,850,000
41	Net Assets at end of year	15,190,000	2,800,000	9,000,000	26,990,000

Primary Reserve Ratio = (lines) $\frac{20+23-21-10-8+18^{**}+17}{38a} = \frac{\$\ 9,790,000}{51,980,000} = 0.188$

Equity Ratio = (lines) $\frac{25-10}{12-10} = \frac{\$26,490,000}{75,740,000} = 0.350$

Net Income Ratio = (lines) $\frac{39a}{31a} = \frac{\$\ (80,000)}{51,900,000} = (0.0015)$

* In accounting statements, parentheses denote negative numbers (i.e., (80,000) equals negative 80,000).

** Long-Term Debt (line 18) cannot exceed Property and Equipment, net (line 8) in this formula.

Section 3: Calculating the Composite Score

Step 1: Calculate the strength factor score for each ratio, by using the following algorithms

	Example (for Private Non-Profit institutions)
Primary Reserve strength factor score = 10 x* Primary Reserve ratio result:	10 x 0.188 = 1.880
Equity strength factor score = 6 x Equity ratio result:	6 x 0.350 = 2.100
Because the Net Income ratio result is negative, the algorithm for negative net income is used -- Net Income strength factor score = 1 + (25 x Net Income ratio result):	1 + (25 x -0.0015) = 0.963

(Note: If the Net Income ratio result is positive, the following algorithm is used, Net Income strength factor score = 1 + (50 x Net Income ratio result) -- If the Net Income ratio result is 0, the Net Income strength factor score is 1).

If the strength factor score for any ratio is greater than or equal to 3, the strength factor score for that ratio is 3. If the strength factor score for any ratio is less than or equal to -1, the strength factor score for that ratio is -1.

Step 2: Calculate the weighted score for each ratio and calculate the composite score by adding the three weighted scores

Primary Reserve weighted score = 40% x Primary Reserve strength factor score:	0.40 x 1.880 = 0.752
Equity weighted score = 40% x Equity strength factor score:	0.40 x 2.100 = 0.840
Net Income weighted score = 20% x Net Income strength factor score:	0.20 x 0.963 = 0.193
Composite score = sum of all weighted scores:	0.752 + 0.840 + 0.193 = 1.785
Round the composite score to one digit after the decimal point to determine the final score:	1.8

* The symbol "x" denotes multiplication.

[62 FR 62885, Nov. 25, 1997, as amended at 63 FR 40349, July 28, 1998. Redesignated at 65 FR 65650, Nov. 1, 2000]

APPENDIX C TO SUBPART L OF PART 668—BALANCE SHEET AND INCOME STATEMENT ADJUSTMENTS FOR RECALCULATING COMPOSITE SCORE

Appendix C to Subpart L of Part 668 - Balance Sheet and Income Statement Adjustments for Recalculating Composite Score

Section 1: Proprietary Institutions

Event	Borrower-defense related lawsuits and other debts, §668.171(c)(1)(i)		Other Litigation, §668.171(c)(1)(ii)		Withdrawal of Owner's Equity, §668.171(c)(1)(v)		Accrediting Agency Requires Teach-out Plan for Closed Location, §668.171(c)(1)(iii)		Gainful Employment Programs, Loss of Eligiblity, §668.171(c)(1)(iv)	
Amount of Loss	Debt, relief claimed, or other amount as determined under §668.171(c)(2)(ii)		Relief claimed, or other amount as determined under §668.171(c)(2)(iii)		Total amount withdrawn, §668.171(c)(2)(iv)		Tilte IV funds received by the closed insitution or location during the most recently completed fiscal year, §668.171(c)(2)(iv)		Title IV funds received during the most recently completed fiscal year by GE programs in jeopardy of losing eligibility, §668.171(c)(2)(iv)	
Allowance for Expenses	Not applicable						Cost of Goods Sold (#28) / Operating Income (#25) multiplied by Amount of Loss			
	Entries for Loss Line item from Section 2, Appendix A						**Entries for Loss and Expenses** Line item from Section 2, Appendix A			
	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit
Adjusting Entries	#32, Total Expenses		#32, Total Expenses		#23, Total Owners Equity		#27, Total Income		#27, Total Income	
		#13, Total Assets		#13, Total Assets		#13, Total Assets		#13, Total Assets		#13, Total Assets
	NA		NA		NA		#13, Total Assets (expense allowance)		#13, Total Assets (expense allowance)	
		NA		NA		NA		#32, Total Expenses (expense allowance)		#32, Total Expenses (expense allowance)

Note that based on the changes to #27 Total Income and Line #32 Total expenses, the following line items may be recalculated: #34 Net Income Before Taxes, #36 Net Income After Taxes, #38 Net Income, #22 Retained Earnings, #23 Total Owner's Equity, and #24 Total Liabilities and Owner's Equity

Section 2: Non-profit Institutions

Event	Borrower-defense related lawsuits and other debts, §668.171(c)(1)(i)		Other Litigation, §668.171(c)(1)(ii)		Accrediting Agency Requires Teach-out Plan for Closed Location, §668.171(c)(1)(iii)		Gainful Employment Programs, Loss of Eligiblity, §668.171(c)(1)(iv	
Amount of Loss	Debt, relief claimed, or other amount as determined under §668.171(c)(2)(ii)		Relief claimed, or other amount as determined under §668.171(c)(2)(iii)		Tilte IV funds received by the closed insitution or location during the most recently completed fiscal year, §668.171(c)(2)(iv)		Title IV funds received during the most recently completed fiscal year by GE programs in jeopardy of losing eligibility, §668.171(c)(2)(iv)	
Allowance for Expenses	Not applicable				Operating expenses (#32) / Tuition & Fees (#27) multiplied by Amount of Loss			
	Entries for Los s Line item from Section 2, Appendix B				**Entries for Loss and Expenses** Line item from Section 2, Appemdix B			
	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit
Adjusting Entries	#38b, Total Expenses (Unrestricted)		#38b, Total Expenses (Unrestricted)		#31b, Total Revenue (Unrestricted)		#31b, Total Revenue (Unrestricted)	
		#12, Total Assets		#12, Total Assets		#12, Total Assets		#12, Total Assets
	NA		NA		#12, Total Assets (expense allowance)		#12, Total Assets (expense allowance)	
		NA		NA		#38b, Total Expenses (expense allowance)		#38b, Total Expenses (expense allowance)

Note that based on the changes to #31b Total Revenue (Unrestricted) and #38b Total Expenses (Unrestricted), the following items may be recalculated: #39b Change in (Unrestricted) Net Assets, #41b (Unrestricted) Net Assets at end of year (will be same as #20 Unrestricted Net Assets), #25 Total Net Assets, #26 Total Liabilitites & Net Assets.

[81 FR 76076, Nov. 1, 2016]

Subpart M—Two Year Cohort Default Rates

SOURCE: 65 FR 65638, Nov. 1, 2000, unless otherwise noted.

§668.181 Purpose of this subpart.

(a) *General.* Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV, HEA programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL and Direct Loan Programs. This subpart applies solely to cohorts, as defined in §§668.182(a) and 668.183(b), for fiscal years through 2011. For these cohorts, this subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a ''challenge'' after you receive your draft cohort default rate, and you request an ''adjustment'' or ''appeal'' after your official cohort default rate is published.

(b) *Cohort Default Rates.* Notwithstanding anything to the contrary in this subpart, we will issue annually

two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. For each of these years, you will receive one set of draft and official cohort default rates under this subpart and another set of draft and official cohort default rates under subpart N of this part.

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

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

[74 FR 55649, Oct. 28, 2009]

§ 668.182 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) *Cohort*. Your cohort is a group of borrowers used to determine your cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.183(b).

(b) *Data manager*. (1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) *Days*. In this subpart, ''days'' means calendar days.

(d) *Default*. A borrower is considered to be in default for cohort default rate purposes under the rules in § 668.183(c).

(e) *Draft cohort default rate*. Your draft cohort default rate is a rate we issue, for your review, before we issue your official cohort default rate. A draft cohort default rate is used only for the purposes described in § 668.185.

(f) *Entering repayment*. (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of ''repayment period'') and in 34 CFR 685.207.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower's Federal Stafford loan enters repayment, if the borrower received the Federal SLS loan and the Federal Stafford loan during the same period of continuous enrollment; or

(ii) In all other cases, on the day after the student ceases to be enrolled at an institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if the loan is paid in full before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section.

(g) *Fiscal year*. A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) *Loan record detail report*. The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official cohort default rate.

(i) *Official cohort default rate*. Your official cohort default rate is the cohort default rate that we publish for you under § 668.186. Cohort default rates calculated under this subpart are not related in any way to cohort default rates that are calculated for the Federal Perkins Loan Program.

(j) *We*. We are the Department, the Secretary, or the Secretary's designee.

(k) *You*. You are an institution.

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

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

§ 668.183 Calculating and applying cohort default rates.

(a) *General*. This section describes the four steps that we follow to calculate and apply your cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default. If more than one cohort will be used to calculate your cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your cohort default rate.

(4) Fourth, we apply your cohort default rate to all of your locations—

(i) As you exist on the date you receive the notice of your official cohort default rate; and

(ii) From the date on which you receive the notice of your official cohort default rate until you receive our notice that the cohort default rate no longer applies.

(b) *Identify the borrowers in a cohort.* (1) Except as provided in paragraph (b)(3) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan that they received to attend your institution, or on the portion of a loan made under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102) that is used to repay those loans.

(2) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(3) A TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not considered for the purpose of calculating and applying cohort default rates.

(c) *Identify the borrowers in a cohort who are in default.* (1) Except as provided in paragraph (c)(2) of this section, for the purposes of this subpart a borrower in a cohort for a fiscal year is considered to be in default if—

(i) Before the end of the following fiscal year, the borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) Before the end of the following fiscal year, the borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower's failure persists for 360 days (or for 270 days, if the borrower's first day of delinquency was before October 7, 1998);

(iii) Before the end of the following fiscal year, you or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort: or

(iv) Before the end of the following fiscal year, the borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by the Secretary or a Federal Consolidation Loan that is held by the Secretary and was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation Loan was used to include the borrower in the cohort, and the borrower's failure persists for 360 days.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the fiscal year immediately following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) Repurchased by a lender because the claim for insurance was submitted or paid in error.

(d) *Calculate the cohort default rate.* Except as provided in § 668.184, if there are—

(1) Thirty or more borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is derived by dividing—

(i) The number of borrowers in the cohort who are in default, as determined under paragraph (c) of this section; by

(ii) The number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2) Fewer than 30 borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is derived by dividing—

(i) The total number of borrowers in that cohort and in the two most recent

prior cohorts who are in default, as determined for each cohort under paragraph (c) of this section; by

(ii) The total number of borrowers in that cohort and the two most recent prior cohorts, as determined for each cohort under paragraph (b) of this section.

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

(Authority: 20 U.S.C. 1070g, 1082, 1085, 1094, 1099c)

[65 FR 65638, Nov. 1, 2000, as amended at 67 FR 67075, Nov. 1, 2002; 73 FR 35494, June 23, 2008; 74 FR 55649, Oct. 28, 2009]

§ 668.184 Determining cohort default rates for institutions that have undergone a change in status.

(a) *General.* (1) Except as provided under 34 CFR 600.32(d), if you undergo a change in status identified in this section, your cohort default rate is determined under this section.

(2) In determining cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) A change in status may affect your eligibility to participate in Title IV, HEA programs under § 668.187 or § 668.188.

(4) If another institution's cohort default rate is applicable to you under this section, you may challenge, request an adjustment, or submit an appeal for the cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.185 and 668.189.

(b) *Acquisition or merger of institutions.* If your institution acquires, or was created by the merger of, one or more institutions that participated independently in the Title IV, HEA programs immediately before the acquisition or merger—

(1) For the cohort default rates published before the date of the acquisition or merger, your cohort default rates are the same as those of your predecessor that had the highest total number of borrowers entering repayment in the two most recent cohorts used to calculate those cohort default rates; and

(2) Beginning with the first cohort default rate published after the date of the acquisition or merger, your cohort default rates are determined by including the applicable borrowers from each institution involved in the acquisition or merger in the calculation under § 668.183.

(c) *Acquisition of branches or locations.* If you acquire a branch or a location from another institution participating in the Title IV, HEA programs—

(1) The cohort default rates published for you before the date of the change apply to you and to the newly acquired branch or location;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and the other institution (including all of its locations) in the calculation under § 668.183;

(3) After the period described in paragraph (c)(2) of this section, your cohort default rates do not include borrowers from the other institution in the calculation under § 668.183; and

(4) At all times, the cohort default rate for the institution from which you acquired the branch or location is not affected by this change in status.

(d) *Branches or locations becoming institutions.* If you are a branch or location of an institution that is participating in the Title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The cohort default rates published before the date of the change for your former parent institution are also applicable to you;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and your former parent institution (including all of its locations) in the calculation under § 668.183; and

(3) After the period described in paragraph (d)(2) of this section, your cohort default rates do not include borrowers

from your former parent institution in the calculation under § 668.183.

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

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

[65 FR 65638, Nov. 1, 2000, as amended at 74 FR 55649, Oct. 28, 2009; 74 FR 55947, Oct. 29, 2009]

§ 668.185 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) *General.* (1) We notify you of your draft cohort default rate before your official cohort default rate is calculated. Our notice includes the loan record detail report for the draft cohort default rate.

(2) Regardless of the number of borrowers included in your cohort, your draft cohort default rate is always calculated using data for that fiscal year alone, using the method described in § 668.183(d)(1).

(3) Your draft cohort default rate and the loan record detail report are not considered public information and may not be otherwise voluntarily released to the public by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in the ''Cohort Default Rate Guide'' that we provide to you. If your challenge does not comply with the requirements in the ''Cohort Default Rate Guide,'' we may deny your challenge.

(b) *Incorrect data challenges.* (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager's position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment, under § 668.190, or in an erroneous data appeal, under § 668.192.

(c) *Participation rate index challenges.* (1)(i) You may challenge an anticipated loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(ii) You may challenge an anticipated loss of eligibility under § 668.187(a)(2), based on three cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those three cohorts' fiscal years.

(2) For a participation rate index challenge, your participation rate index is calculated as described in § 668.195(b), except that—

(i) The draft cohort default rate is considered to be your most recent cohort default rate; and

(ii) If the cohort used to calculate your draft cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.183(d)(2).

(3) You must send your participation rate index challenge, including all supporting documentation, to us within 45 days after you receive your draft cohort default rate.

(4) We notify you of our determination on your participation rate index challenge before your official cohort default rate is published.

(5) If we determine that you qualify for continued eligibility based on your participation rate index challenge, you will not lose eligibility under § 668.187 when your next official cohort default

rate is published. A successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility. However, if your successful challenge of a loss of eligibility under paragraph (c)(1)(ii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, we also excuse you from any subsequent loss of eligibility, under § 668.187(a)(2), that would be based on that official cohort default rate.

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

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

[65 FR 65638, Nov. 1, 2000, as amended at 74 FR 55649, Oct. 28, 2009]

§ 668.186 Notice of your official cohort default rate.

(a) We electronically notify you of your cohort default rate after we calculate it, by sending you an eCDR notification package to the destination point you designate. After we send our notice to you, we publish a list of cohort default rates calculated under this subpart for all institutions.

(b) If you have one or more borrowers entering repayment or are subject to sanctions, or if the Department believes you will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report as part of your eCDR notification package.

(c) You have five business days, from the transmission date for eCDR notification packages as posted on the Department's Web site, to report any problem with receipt of the electronic transmission of your eCDR notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the transmission date for eCDR notification packages that is posted on the Department's Web site.

(e) If you timely report a problem with the receipt of the electronic transmission of your eCDR notification package under paragraph (c) of this section and the Department agrees that the problem with transmission was not caused by you, the Department will extend the challenge, appeal and adjustment deadlines and timeframes to account for a retransmission of your eCDR notification package after the technical problem is resolved.

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

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

[74 FR 55649, Oct. 28, 2009]

§ 668.187 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) *End of participation.* (1) Except as provided in paragraph (e) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate is greater than 40 percent.

(2) Except as provided in paragraphs (d) and (e) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your three most recent cohort default rates are each 25 percent or greater.

(b) *Length of period of ineligibility.* Your loss of eligibility under this section continues—

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) *Using a cohort default rate more than once.* The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) *Continuing participation in Pell.* If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on three cohort default rates of 25 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(e) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in § 668.189(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (e)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under § 668.189. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under § 668.189.

(4) To avoid liabilities you might otherwise incur under paragraph (f) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(f) *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan Program under paragraph (e)(1) of this section, and we determine that none of your requests for adjustments or appeals qualify you for continued eligibility—

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(g) *Regaining eligibility.* If you lose your eligibility to participate in a program under this section, you may not participate in that program until—

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;

(3) You submit a new application for participation in the program;

(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

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

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

[74 FR 55650, Oct. 28, 2009]

§ 668.188 Preventing evasion of the consequences of cohort default rates.

(a) *General.* You are subject to a loss of eligibility that has already been imposed against another institution as a result of cohort default rates if—

(1) You and the ineligible institution are both parties to a transaction that results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or

any other change in whole or in part in institutional structure or identity;

(2) Following the change described in paragraph (a)(1) of this section, you offer an educational program at substantially the same address at which the ineligible institution had offered an educational program before the change; and

(3) There is a commonality of ownership or management between you and the ineligible institution, as the ineligible institution existed before the change.

(b) *Commonality of ownership or management.* For the purposes of this section, a commonality of ownership or management exists if, at each institution, the same person (as defined in 34 CFR 600.31) or members of that person's family, directly or indirectly—

(1) Holds or held a managerial role; or

(2) Has or had the ability to affect substantially the institution's actions, within the meaning of 34 CFR 600.21.

(c) *Teach-outs.* Notwithstanding paragraph (b)(1) of this section, a commonality of management does not exist if you are conducting a teach-out under a teach-out agreement as defined in 34 CFR 602.3 and administered in accordance with 34 CFR 602.24(c), and—

(1)(i) Within 60 days after the change described in this section, you send us the names of the managers for each facility undergoing the teach-out as it existed before the change and for each facility as it exists after you believe that the commonality of management has ended; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended; or

(2)(i) Within 30 days after you receive our notice that we have denied your submission under paragraph (c)(1)(i) of this section, you make the management changes we request and send us a list of the names of the managers for each facility undergoing the teach-out as it exists after you make those changes; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended.

(d) *Initial determination.* We encourage you to contact us before undergoing a change described in this section. If you write to us, providing the information we request, we will provide a written initial determination of the anticipated change's effect on your eligibility.

(e) *Notice of accountability.* (1) We notify you in writing if, in response to your notice or application filed under 34 CFR 600.20 or 600.21, we determine that you are subject to a loss of eligibility, under paragraph (a) of this section, that has been imposed against another institution.

(2) Our notice also advises you of the scope and duration of your loss of eligibility. The loss of eligibility applies to all of your locations from the date you receive our notice until the expiration of the period of ineligibility applicable to the other institution.

(3) If you are subject to a loss of eligibility under this section that has already been imposed against another institution, you may only request an adjustment or submit an appeal for the loss of eligibility under the same requirements that would be applicable to the other institution under § 668.189.

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

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

[65 FR 65638, Nov. 1, 2000, as amended at 74 FR 55650, Oct. 28, 2009]

§ 668.189 General requirements for adjusting official cohort default rates and for appealing their consequences.

(a) *Remaining eligible.* You do not lose eligibility under § 668.187 if—

(1) We recalculate your cohort default rate, and it is below the percentage threshold for the loss of eligibility as the result of—

(i) An uncorrected data adjustment submitted under this section and § 668.190;

(ii) A new data adjustment submitted under this section and § 668.191;

(iii) An erroneous data appeal submitted under this section and § 668.192; or

(iv) A loan servicing appeal submitted under this section and § 668.193; or

(2) You meet the requirements for—

(i) An economically disadvantaged appeal submitted under this section and § 668.194;

(ii) A participation rate index appeal submitted under this section and § 668.195;

(iii) An average rates appeal submitted under this section and § 668.196; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and § 668.197.

(b) *Limitations on your ability to dispute your cohort default rate.* (1) You may not dispute the calculation of a cohort default rate except as described in this subpart.

(2) You may not request an adjustment or appeal a cohort default rate, under § 668.190, § 668.191, § 668.192, or § 668.193, more than once.

(3) You may not request an adjustment or appeal a cohort default rate, under § 668.190, § 668.191, § 668.192, or § 668.193, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.187, based entirely or partially on that cohort default rate.

(c) *Content and format of requests for adjustments and appeals.* We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor's opinions, management's written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in the ''Cohort Default Rate Guide'' that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) *Our copies of your correspondence.* Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) *Requirements for data managers' responses.* (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) If a data manager sends us correspondence under this subpart that is not in a format acceptable to us, we may require the data manager to revise that correspondence's format, and we may prescribe a format for that data manager's subsequent correspondence with us.

(f) *Our decision on your request for adjustment or appeal.* (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.190 or § 668.191, or an appeal, under § 668.192 or § 668.193—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a loss of eligibility under § 668.187, within 45 days after we receive your completed request for an adjustment or appeal; or

(ii) In all other cases, except for appeals submitted under § 668.192(a) to avoid provisional certification, before we notify you of your next official cohort default rate.

(5) You may not seek judicial review of our determination of a cohort default rate until we issue our decision

on all pending requests for adjustments or appeals for that cohort default rate.

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

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

§ 668.190 Uncorrected data adjustments.

(a) *Eligibility*. You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if in response to your challenge under § 668.185(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment*. You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination*. We recalculate your cohort default rate, based on the corrected data, and electronically correct the rate that is publicly released, if we determine that—

(1) In response to your challenge under § 668.185(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect.

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

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

[74 FR 55650, Oct. 28, 2009]

§ 668.191 New data adjustments.

(a) *Eligibility*. You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment*. (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.192(b)(6)(i) or § 668.193(c)(10)(i).

(c) *Determination*. If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate

based on the correct data and electronically correct the rate that is publicly released.

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

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

[74 FR 55651, Oct. 28, 2009]

§ 668.192 Erroneous data appeals.

(a) *Eligibility*. Except as provided in § 668.189(b), you may appeal the calculation of a cohort default rate upon which a loss of eligibility, under § 668.187, or provisional certification, under § 668.16(m), is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.185(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed, and you dispute the accuracy of that data.

(b) *Deadlines for submitting an appeal*. (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility or provisional certification. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error. We respond to your request under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request; or

(ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.191(b)(6)(i) or § 668.193(c)(10)(i).

(c) *Determination*. If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and electronically correct the rate that is publicly released.

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

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

[65 FR 65638, Nov. 1, 2000, as amended at 74 FR 55651, Oct. 28, 2009]

§ 668.193 Loan servicing appeals.

(a) *Eligibility*. Except as provided in § 668.189(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

(1) Your most recent cohort default rate; or

(2) Any cohort default rate upon which a loss of eligibility under § 668.187 is based.

(b) *Improper loan servicing*. For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the FFEL Program lender or the Direct

Loan Servicer, as defined in 34 CFR 685.102, failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan;

(2) Attempt at least one phone call to the borrower;

(3) Send a final demand letter to the borrower;

(4) For a Direct Loan Program loan only, document that skip tracing was performed if the Direct Loan Servicer determined that it did not have the borrower's current address; and

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) *Deadlines for submitting an appeal.* (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the loan record detail report.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to

your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of this section or in § 668.191(b)(6)(i) or § 668.192(b)(6)(i).

(d) *Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the cohort default rate you are appealing.

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the cohort default rate due to improper loan servicing or collection.

(e) *Loan servicing records.* Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our Direct Loan Servicer that are used in determining your cohort default rate.

(f) *Determination.* (1) We determine the number of loans, included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate, and electronically correct the rate that is publicly released.

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

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

[65 FR 65638, Nov. 1, 2000, as amended at 67 FR 67075, Nov. 1, 2002; 74 FR 55651, Oct. 28, 2009]

§ 668.194 Economically disadvantaged appeals.

(a) *Eligibility.* As described in this section, you may appeal a notice of a loss of eligibility under § 668.187 if an independent auditor's opinion certifies that your low income rate is two-thirds or more and—

(1) You offer an associate, baccalaureate, graduate, or professional degree, and your completion rate is 70 percent or more; or

(2) You do not offer an associate, baccalaureate, graduate, or professional degree, and your placement rate is 44 percent or more.

(b) *Low income rate.* (1) Your low income rate is the percentage of your students, as described in paragraph (b)(2) of this section, who—

(i) For an award year that overlaps the 12-month period selected under paragraph (b)(2) of this section, have an expected family contribution, as defined in 34 CFR 690.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student's enrollment status or cost of attendance; or

(ii) For a calendar year that overlaps the 12-month period selected under paragraph (b)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student's parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guidelines for the size of the student's family unit.

(2) The students who are used to determine your low income rate include only students who were enrolled on at least a half-time basis in an eligible program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year.

(c) *Completion rate.* (1) Your completion rate is the percentage of your students, as described in paragraph (c)(2) of this section, who—

(i) Completed the educational programs in which they were enrolled;

(ii) Transferred from your institution to a higher level educational program;

(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or

(iv) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine your completion rate include only regular students who were—

(i) Initially enrolled on a full-time basis in an eligible program; and

(ii) Originally scheduled to complete their programs during the same 12-month period used to calculate the low income rate.

(d) *Placement rate.* (1) Except as provided in paragraph (d)(2) of this section, your placement rate is the percentage of your students, as described in paragraphs (d)(3) and (d)(4) of this section, who—

(i) Are employed, in an occupation for which you provided training, on the date following 1 year after their last date of attendance at your institution;

(ii) Were employed for at least 13 weeks, in an occupation for which you provided training, between the date they enrolled at your institution and the first date that is more than a year after their last date of attendance at your institution; or

(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(3) The students who are used to determine your placement rate include only former students who—

(i) Were initially enrolled in an eligible program on at least a half-time basis;

(ii) Were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to calculate the low income rate; and

(iii) Remained in the program beyond the point at which a student would have received a 100 percent tuition refund from you.

(4) A student is not included in the calculation of your placement rate if that student, on the date that is 1 year after the student's originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(e) *Scheduled to complete.* In calculating a completion or placement rate under this section, the date on which a student is originally scheduled to complete a program is based on—

(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the program by a full-time student; or

(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the program if the student remained at that level of enrollment throughout the program.

(f) *Deadline for submitting an appeal.* (1) Within 30 days after you receive the notice of your loss of eligibility, you must send us your management's written assertion, as described in the Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor's opinion described in paragraph (g) of this section.

(g) *Independent auditor's opinion.* (1) The independent auditor's opinion must state whether your management's written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with—

(i) The American Institute of Certified Public Accountant's (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended (these standards may be obtained by calling the AICPA's order department, at 1–888–777–7077); and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(h) *Determination.* You do not lose eligibility under § 668.187 if—

(1) Your independent auditor's opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor's opinion and your management's written assertion—

(i) Meet the requirements for an economically disadvantaged appeal; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor's opinion unacceptable.

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

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

§ 668.195 Participation rate index appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.06015.

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on three cohort default rates of 25 percent or greater, if your participation rate index is equal to or less than 0.0375 for any of those three cohorts' fiscal years.

(b) *Calculating your participation rate index.* (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under § 668.183(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(c) *Deadline for submitting an appeal.* You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(d) *Determination.* (1) You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than 0.0375, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.187(a)(2) that would be based on the official cohort default rate for that fiscal year.

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

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

§ 668.196 Average rates appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.187(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under § 668.183(d)(2).

(2) You may appeal a notice of a loss of eligibility under § 668.187(a)(2), based on three cohort default rates of 25 percent or greater, if at least two of those cohort default rates—

(i) Are calculated as average rates under § 668.183(d)(2); and

(ii) Would be less than 25 percent if calculated for the fiscal year alone using the method described in § 668.183(d)(1).

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same

time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination*. You do not lose eligibility under § 668.187 if we determine that you meet the requirements for an average rates appeal.

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

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

[65 FR 65638, Nov. 1, 2000, as amended at 74 FR 55651, Oct. 28, 2009]

§ 668.197 Thirty-or-fewer borrowers appeals.

(a) *Eligibility*. You may appeal a notice of a loss of eligibility under § 668.187 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) *Deadline for submitting an appeal*. (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination*. You do not lose eligibility under § 668.187 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

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

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

Subpart N—Cohort Default Rates

SOURCE: 74 FR 55651, Oct. 28, 2009, unless otherwise noted.

§ 668.200 Purpose of this subpart.

(a) *General*. Your cohort default rate is a measure we use to determine your eligibility to participate in various Title IV, HEA programs. We may also use it for determining your eligibility for exemptions, such as those for certain disbursement requirements under the FFEL and Direct Loan Programs. This subpart applies solely to cohorts, as defined in §§ 668.201(a) and 668.202(b), for fiscal years 2009 and later. For these cohorts, this subpart describes how cohort default rates are calculated, some of the consequences of cohort default rates, and how you may request changes to your cohort default rates or appeal their consequences. Under this subpart, you submit a ''challenge'' after you receive your draft cohort default rate, and you request an ''adjustment'' or ''appeal'' after your official cohort default rate is published.

(b) *Cohort Default Rates*. Notwithstanding anything to the contrary in this subpart, we will issue annually two sets of draft and official cohort default rates for fiscal years 2009, 2010, and 2011. For each of these years, you will receive one set of draft and official cohort default rates under this subpart and another set of draft and official cohort default rates under subpart M of this part.

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

§ 668.201 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) *Cohort*. Your cohort is a group of borrowers used to determine your cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.202(b).

(b) *Data manager*. (1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) *Days*. In this subpart, ''days'' means calendar days.

(d) *Default*. A borrower is considered to be in default for cohort default rate purposes under the rules in § 668.202(c).

(e) *Draft cohort default rate*. Your draft cohort default rate is a rate we

issue, for your review, before we issue your official cohort default rate. A draft cohort default rate is used only for the purposes described in § 668.204.

(f) *Entering repayment*. (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of ''repayment period'') and in 34 CFR 685.207.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower's Federal Stafford loan enters repayment, if the borrower received the Federal SLS loan and the Federal Stafford loan during the same period of continuous enrollment; or

(ii) In all other cases, on the day after the student ceases to be enrolled at an institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if the loan is paid in full before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section.

(g) *Fiscal year*. A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) *Loan record detail report*. The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official cohort default rate.

(i) *Official cohort default rate*. Your official cohort default rate is the cohort default rate that we publish for you under § 668.205. Cohort default rates calculated under this subpart are not related in any way to cohort default rates that are calculated for the Federal Perkins Loan Program.

(j) *We*. We are the Department, the Secretary, or the Secretary's designee.

(k) *You*. You are an institution.

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

§ 668.202 Calculating and applying cohort default rates.

(a) *General*. This section describes the four steps that we follow to calculate and apply your cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default by the end of the second fiscal year following the fiscal year those borrowers entered repayment. If more than one cohort will be used to calculate your cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your cohort default rate.

(4) Fourth, we apply your cohort default rate to all of your locations—

(i) As you exist on the date you receive the notice of your official cohort default rate; and

(ii) From the date on which you receive the notice of your official cohort default rate until you receive our notice that the cohort default rate no longer applies.

(b) *Identify the borrowers in a cohort*. (1) Except as provided in paragraph (b)(3) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford loan, Federal SLS loan, Direct Subsidized loan, or Direct Unsubsidized loan that they received to attend your institution, or on the portion of a loan made under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program (as defined in 34 CFR 685.102) that is used to repay those loans.

(2) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(3) A TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not considered for the purpose of calculating and applying cohort default rates.

(c) *Identify the borrowers in a cohort who are in default.* (1) Except as provided in paragraph (c)(2) of this section, a borrower in a cohort for a fiscal year is considered to be in default if, before the end of the second fiscal year following the fiscal year the borrower entered repayment—

(i) The borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) The borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower's failure persists for 360 days (or for 270 days, if the borrower's first day of delinquency was before October 7, 1998);

(iii) You or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort; or

(iv) The borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by the Secretary or a Federal Consolidation Loan that is held by the Secretary and that was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation was used to include the borrower in the cohort, and the borrower's failure persists for 360 days.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the second fiscal year following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) Repurchased by a lender because the claim for insurance was submitted or paid in error.

(d) Calculate the cohort default rate. Except as provided in § 668.203, if there are—

(1)(i) Thirty or more borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is calculated by—

(ii) Dividing the number of borrowers in the cohort who are in default, as determined under paragraph (c) of this section by the number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2)(i) Fewer than 30 borrowers in your cohort for a fiscal year, your cohort default rate is the percentage that is calculated by—

(ii) Dividing the total number of borrowers in that cohort and in the two most recent prior cohorts who are in default, as determined for each cohort under paragraph (c) of this section by the total number of borrowers in that cohort and the two most recent prior cohorts, as determined for each cohort under paragraph (b) of this section.

(Authority:20 U.S.C. 1070g, 1082, 1085, 1094, 1099c)

§ 668.203 Determining cohort default rates for institutions that have undergone a change in status.

(a) *General.* (1) Except as provided under 34 CFR 600.32(d), if you undergo a change in status identified in this section, your cohort default rate is determined under this section.

(2) In determining cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) A change in status may affect your eligibility to participate in Title IV, HEA programs under § 668.206 or § 668.207.

(4) If another institution's cohort default rate is applicable to you under this section, you may challenge, request an adjustment, or submit an appeal for the cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.204 and 668.208.

(b) *Acquisition or merger of institutions.* If your institution acquires, or was created by the merger of, one or more institutions that participated independently in the Title IV, HEA programs immediately before the acquisition or merger—

(1) For the cohort default rates published before the date of the acquisition or merger, your cohort default rates are the same as those of your predecessor that had the highest total number of borrowers entering repayment in the two most recent cohorts used to calculate those cohort default rates; and

(2) Beginning with the first cohort default rate published after the date of the acquisition or merger, your cohort default rates are determined by including the applicable borrowers from each institution involved in the acquisition or merger in the calculation under § 668.202.

(c) *Acquisition of branches or locations.* If you acquire a branch or a location from another institution participating in the Title IV, HEA programs—

(1) The cohort default rates published for you before the date of the change apply to you and to the newly acquired branch or location;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and the other institution (including all of its locations) in the calculation under § 668.202;

(3) After the period described in paragraph (c)(2) of this section, your cohort default rates do not include borrowers from the other institution in the calculation under § 668.202; and

(4) At all times, the cohort default rate for the institution from which you acquired the branch or location is not affected by this change in status.

(d) *Branches or locations becoming institutions.* If you are a branch or location of an institution that is participating in the Title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The cohort default rates published before the date of the change for your former parent institution are also applicable to you;

(2) Beginning with the first cohort default rate published after the date of the change, your cohort default rates for the next 3 fiscal years are determined by including the applicable borrowers from your institution and your former parent institution (including all of its locations) in the calculation under § 668.202; and

(3) After the period described in paragraph (d)(2) of this section, your cohort default rates do not include borrowers from your former parent institution in the calculation under § 668.202.

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

§ 668.204 Draft cohort default rates and your ability to challenge before official cohort default rates are issued.

(a) *General.* (1) We notify you of your draft cohort default rate before your official cohort default rate is calculated. Our notice includes the loan record detail report for the draft cohort default rate.

(2) Regardless of the number of borrowers included in your cohort, your draft cohort default rate is always calculated using data for that fiscal year alone, using the method described in § 668.202(d)(1).

(3) Your draft cohort default rate and the loan record detail report are not considered public information and may not be otherwise voluntarily released to the public by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in the ''Cohort Default Rate Guide'' that we provide to you. If your challenge does not comply with the requirements in the ''Cohort Default Rate Guide,'' we may deny your challenge.

(b) *Incorrect data challenges.* (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager's position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment, under § 668.209, or in an erroneous data appeal, under § 668.211.

(c) *Participation rate index challenges.* (1)(i) You may challenge an anticipated loss of eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if your participation rate index for that cohort's fiscal year is equal to or less than 0.0832.

(ii) Subject to § 668.208(b), you may challenge a potential loss of eligibility under § 668.206(a)(2), based on any cohort default rate that is less than or equal to 40 percent, but greater than or equal to 30 percent, for any of the three most recently calculated fiscal years, if your participation rate index is equal to or less than 0.0625 for that cohort's fiscal year.

(iii) You may challenge a potential placement on provisional certification under § 668.16(m)(2)(i), based on any cohort default rate that fails to satisfy the standard of administrative capability in § 668.16(m)(1)(ii), if your participation rate index is equal to or less than 0.0625 for that cohort's fiscal year.

(2) For a participation rate index challenge, your participation rate index is calculated as described in § 668.214(b), except that—

(i) The draft cohort default rate is considered to be your most recent cohort default rate; and

(ii) If the cohort used to calculate your draft cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.202(d)(2).

(3) You must send your participation rate index challenge, including all supporting documentation, to us within 45 days after you receive your draft cohort default rate.

(4) We notify you of our determination on your participation rate index challenge before your official cohort default rate is published.

(5) If we determine that you qualify for continued eligibility or full certification based on your participation rate index challenge, you will not lose eligibility under § 668.206 or be placed on provisional certification under § 668.16(m)(2)(i) when your next official cohort default rate is published. Unless that next official cohort default rate is less than or equal to your draft cohort default rate, a successful challenge that is based on your draft cohort default rate does not excuse you from any other loss of eligibility or placement on provisional certification. However, if your successful challenge under paragraph (c)(1)(ii) or (iii) of this section is based on a prior, official cohort default rate, and not on your draft cohort default rate, or if the next official cohort default rate published is less than or equal to the draft rate you successfully challenged, we also excuse you from any subsequent loss of eligibility, under § 668.206(a)(2), or placement on provisional certification, under § 668.16(m)(2)(i), that would be based on that official cohort default rate.

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

[74 FR 55651, Oct. 28, 2009, as amended at 78 FR 65804, Nov. 1, 2013; 80 FR 67236, Oct. 30, 2015]

§ 668.205 Notice of your official cohort default rate.

(a) We electronically notify you of your cohort default rate after we calculate it, by sending you an eCDR notification package to the destination point you designate. After we send our notice to you, we publish a list of cohort default rates for all institutions.

(b) If you had one or more borrowers entering repayment in the fiscal year for which the rate is calculated, or are subject to sanctions, or if the Department believes you will have an official cohort default rate calculated as an average rate, you will receive a loan record detail report as part of your eCDR notification package.

(c) You have five business days, from the transmission date for eCDR notification packages as posted on the Department's Web site, to report any problem with receipt of the electronic transmission of your eCDR notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the transmission date for eCDR notification packages that is posted on the Department's Web site.

(e) If you timely report a problem with transmission of your eCDR notification package under paragraph (c) of this section and the Department agrees that the problem with transmission was not caused by you, the Department will extend the challenge, appeal and adjustment deadlines and timeframes to account for a retransmission of your eCDR notification package after the technical problem is resolved.

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

§ 668.206 Consequences of cohort default rates on your ability to participate in Title IV, HEA programs.

(a) *End of participation.* (1) Except as provided in paragraph (e) of this section, you lose your eligibility to participate in the FFEL and Direct Loan programs 30 days after you receive our notice that your most recent cohort default rate for fiscal year 2011 or later is greater than 40 percent.

(2) Except as provided in paragraphs (d) and (e) of this section, you lose your eligibility to participate in the FFEL, Direct Loan, and Federal Pell Grant programs 30 days after you receive our notice that your three most recent cohort default rates are each 30 percent or greater.

(b) *Length of period of ineligibility.* Your loss of eligibility under this section continues—

(1) For the remainder of the fiscal year in which we notify you that you are subject to a loss of eligibility; and

(2) For the next 2 fiscal years.

(c) *Using a cohort default rate more than once.* The use of a cohort default rate as a basis for a loss of eligibility under this section does not preclude its use as a basis for—

(1) Any concurrent or subsequent loss of eligibility under this section; or

(2) Any other action by us.

(d) *Continuing participation in Pell.* If you are subject to a loss of eligibility under paragraph (a)(2) of this section, based on three cohort default rates of 30 percent or greater, you may continue to participate in the Federal Pell Grant Program if we determine that you—

(1) Were ineligible to participate in the FFEL and Direct Loan programs before October 7, 1998, and your eligibility was not reinstated;

(2) Requested in writing, before October 7, 1998, to withdraw your participation in the FFEL and Direct Loan programs, and you were not later reinstated; or

(3) Have not certified an FFELP loan or originated a Direct Loan Program loan on or after July 7, 1998.

(e) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while your request for adjustment or appeal, as listed in § 668.208(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility continued under paragraph (e)(1) of this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify you for continued eligibility under § 668.208. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) You do not lose eligibility under this section if we determine that your request for adjustment or appeal meets all requirements of this subpart and qualifies you for continued eligibility under § 668.208.

(4) To avoid liabilities you might otherwise incur under paragraph (f) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(f) *Liabilities during the adjustment or appeal process.* If you continued to participate in the FFEL or Direct Loan Program under paragraph (e)(1) of this section, and we determine that none of

your requests for adjustments or appeals qualify you for continued eligibility—

(1) For any FFEL or Direct Loan Program loan that you certified and delivered or originated and disbursed more than 30 days after you received the notice of your cohort default rate, we estimate the amount of interest, special allowance, reinsurance, and any related or similar payments we make or are obligated to make on those loans;

(2) We exclude from this estimate any amount attributable to funds that you delivered or disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(g) *Regaining eligibility*. If you lose your eligibility to participate in a program under this section, you may not participate in that program until—

(1) The period described in paragraph (b) of this section has ended;

(2) You pay any amount owed to us under this section or are meeting that obligation under an agreement acceptable to us;

(3) You submit a new application for participation in the program;

(4) We determine that you meet all of the participation requirements in effect at the time of your application; and

(5) You and we enter into a new program participation agreement.

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

§ 668.207 Preventing evasion of the consequences of cohort default rates.

(a) *General*. You are subject to a loss of eligibility that has already been imposed against another institution as a result of cohort default rates if—

(1) You and the ineligible institution are both parties to a transaction that results in a change of ownership, a change in control, a merger, a consolidation, an acquisition, a change of name, a change of address, any change that results in a location becoming a freestanding institution, a purchase or sale, a transfer of assets, an assignment, a change of identification number, a contract for services, an addition or closure of one or more locations or branches or educational programs, or any other change in whole or in part in institutional structure or identity;

(2) Following the change described in paragraph (a)(1) of this section, you offer an educational program at substantially the same address at which the ineligible institution had offered an educational program before the change; and

(3) There is a commonality of ownership or management between you and the ineligible institution, as the ineligible institution existed before the change.

(b) *Commonality of ownership or management*. For the purposes of this section, a commonality of ownership or management exists if, at each institution, the same person (as defined in 34 CFR 600.31) or members of that person's family, directly or indirectly—

(1) Holds or held a managerial role; or

(2) Has or had the ability to affect substantially the institution's actions, within the meaning of 34 CFR 600.21.

(c) *Teach-outs*. Notwithstanding paragraph (b)(1) of this section, a commonality of management does not exist if you are conducting a teach-out under a teach-out agreement as defined in 34 CFR 602.3 and administered in accordance with 34 CFR 602.24(c), and—

(1)(i) Within 60 days after the change described in this section, you send us the names of the managers for each facility undergoing the teach-out as it existed before the change and for each facility as it exists after you believe that the commonality of management has ended; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended; or

(2)(i) Within 30 days after you receive our notice that we have denied your submission under paragraph (c)(1)(i) of this section, you make the management changes we request and send us a list of the names of the managers for each facility undergoing the teach-out as it exists after you make those changes; and

(ii) We determine that the commonality of management, as described in paragraph (b)(1) of this section, has ended.

(d) *Initial determination*. We encourage you to contact us before undergoing a change described in this section. If you write to us, providing the information we request, we will provide a written initial determination of the anticipated change's effect on your eligibility.

(e) *Notice of accountability*. (1) We notify you in writing if, in response to your notice or application filed under 34 CFR 600.20 or 600.21, we determine that you are subject to a loss of eligibility, under paragraph (a) of this section, that has been imposed against another institution.

(2) Our notice also advises you of the scope and duration of your loss of eligibility. The loss of eligibility applies to all of your locations from the date you receive our notice until the expiration of the period of ineligibility applicable to the other institution.

(3) If you are subject to a loss of eligibility under this section that has already been imposed against another institution, you may only request an adjustment or submit an appeal for the loss of eligibility under the same requirements that would be applicable to the other institution under § 668.208.

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

§ 668.208 General requirements for adjusting official cohort default rates and for appealing their consequences.

(a) *Remaining eligible*. You do not lose eligibility under § 668.206 if—

(1) We recalculate your cohort default rate, and it is below the percentage threshold for the loss of eligibility as the result of—

(i) An uncorrected data adjustment submitted under this section and § 668.209;

(ii) A new data adjustment submitted under this section and § 668.210;

(iii) An erroneous data appeal submitted under this section and § 668.211; or

(iv) A loan servicing appeal submitted under this section and § 668.212; or

(2) You meet the requirements for—

(i) An economically disadvantaged appeal submitted under this section and § 668.213;

(ii) A participation rate index challenge or appeal submitted under this section and § 668.204 or § 668.214;

(iii) An average rates appeal submitted under this section and § 668.215; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and § 668.216.

(b) *Limitations on your ability to dispute your cohort default rate*. (1) You may not dispute the calculation of a cohort default rate except as described in this subpart or in § 668.16(m)(2).

(2) You may not challenge, request an adjustment to, or appeal a draft or official cohort default rate, under § 668.204, § 668.209, § 668.210, § 668.211, § 668.212, or § 668.214, more than once on that cohort default rate.

(3) You may not challenge, request an adjustment to, or appeal a draft or official cohort default rate, under § 668.204, § 668.209, § 668.210, § 668.211, § 668.212, or § 668.214, if you previously lost your eligibility to participate in a Title IV, HEA program, under § 668.206, or were placed on provisional certification under § 668.16(m)(2)(i), based entirely or partially on that cohort default rate.

(c) *Content and format of requests for adjustments and appeals*. We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor's opinions, management's written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in the ''Cohort Default Rate Guide'' that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) *Our copies of your correspondence.* Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) *Requirements for data managers' responses.* (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) If a data manager sends us correspondence under this subpart that is not in a format acceptable to us, we may require the data manager to revise that correspondence's format, and we may prescribe a format for that data manager's subsequent correspondence with us.

(f) *Our decision on your request for adjustment or appeal.* (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.209 or § 668.210, or an appeal, under § 668.211 or § 668.212—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a loss of eligibility under § 668.206 or potential placement on provisional certification under § 668.16(m)(2)(i) or file an economically disadvantaged appeal under § 668.213(a)(2), within 45 days after we receive your completed request for an adjustment or appeal; or

(ii) In all other cases, except for appeals submitted under § 668.211(a) following placement on provisional certification, before we notify you of your next official cohort default rate.

(5) You may not seek judicial review of our determination of a cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that cohort default rate.

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

[74 FR 55651, Oct. 28, 2009, as amended at 80 FR 67236, Oct. 30, 2015]

§ 668.209 Uncorrected data adjustments.

(a) *Eligibility.* You may request an uncorrected data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if in response to your challenge under § 668.204(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment.* You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination.* We recalculate your cohort default rate, based on the corrected data, and electronically correct the rate that is publicly released if we determine that—

(1) In response to your challenge under § 668.204(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official cohort default rate; and

(3) We agree that the data are incorrect.

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

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

§ 668.210 New data adjustments.

(a) *Eligibility*. You may request a new data adjustment for your most recent cohort of borrowers, used to calculate your most recent official cohort default rate, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment*. (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.211(b)(6)(i) or § 668.212(c)(10)(i).

(c) *Determination*. If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and make electronic corrections to the rate that is publicly released.

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

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

§ 668.211 Erroneous data appeals.

(a) *Eligibility*. Except as provided in § 668.208(b), you may appeal the calculation of a cohort default rate upon which a loss of eligibility, under § 668.206, or provisional certification, under § 668.16(m), is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.204(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official cohort default rates shows that the data have been newly included, excluded, or otherwise changed, and you dispute the accuracy of that data.

(b) *Deadlines for submitting an appeal*. (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility or provisional certification. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request; or

(ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.210(b)(6)(i) or § 668.212(c)(10)(i).

(c) *Determination*. If we determine that incorrect data were used to calculate your cohort default rate, we recalculate your cohort default rate based on the correct data and electronically correct the rate that is publicly released.

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

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

§ 668.212 Loan servicing appeals.

(a) *Eligibility*. Except as provided in § 668.208(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

(1) Your most recent cohort default rate; or

(2) Any cohort default rate upon which a loss of eligibility under § 668.206 is based.

(b) *Improper loan servicing*. For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the FFEL Program lender or the Direct Loan Servicer, as defined in 34 CFR 685.102, failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan.

(2) Attempt at least one phone call to the borrower.

(3) Send a final demand letter to the borrower.

(4) For a Direct Loan Program loan only, document that skip tracing was performed if the Direct Loan Servicer determined that it did not have the borrower's current address.

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) *Deadlines for submitting an appeal*. (1) If the loan record detail report was not included with your official cohort default rate notice, you must request it within 15 days after you receive the notice of your official cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the loan record detail report.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of this section or in § 668.210(b)(6)(i) or § 668.211(b)(6)(i).

(d) *Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the cohort default rate you are appealing.

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the cohort default rate due to improper loan servicing or collection.

(e) *Loan servicing records.* Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our Direct Loan Servicer that are used in determining your cohort default rate.

(f) *Determination.* (1) We determine the number of loans, included in your representative sample of loan servicing

records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of your cohort default rate, and electronically correct the rate that is publicly released.

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

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

§ 668.213 Economically disadvantaged appeals.

(a) *General.* As provided in this section you may appeal—

(1) A notice of a loss of eligibility under § 668.206; or

(2) A notice of a second successive official cohort default rate calculated under this subpart that is equal to or greater than 30 percent but less than or equal to 40 percent, potentially subjecting you to provisional certification under § 668.16(m)(2)(i).

(b) *Eligibility.* You may appeal under this section if an independent auditor's opinion certifies that your low income rate is two-thirds or more and—

(1) You offer an associate, baccalaureate, graduate, or professional degree, and your completion rate is 70 percent or more; or

(2) You do not offer an associate, baccalaureate, graduate, or professional degree, and your placement rate is 44 percent or more.

(c) *Low income rate.* (1) Your low income rate is the percentage of your students, as described in paragraph (c)(2) of this section, who—

(i) For an award year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an expected family contribution, as defined in 34 CFR 690.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student's enrollment status or cost of attendance; or

(ii) For a calendar year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student's parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guidelines for the size of the student's family unit.

(2) The students who are used to determine your low income rate include only students who were enrolled on at least a half-time basis in an eligible program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year.

(d) *Completion rate.* (1) Your completion rate is the percentage of your students, as described in paragraph (d)(2) of this section, who—

(i) Completed the educational programs in which they were enrolled;

(ii) Transferred from your institution to a higher level educational program;

(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or

(iv) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine your completion rate include only regular students who were—

(i) Initially enrolled on a full-time basis in an eligible program; and

(ii) Originally scheduled to complete their programs during the same 12-month period used to calculate the low income rate.

(e) *Placement rate.* (1) Except as provided in paragraph (e)(2) of this section, your placement rate is the percentage of your students, as described in paragraphs (e)(3) and (e)(4) of this section, who—

(i) Are employed, in an occupation for which you provided training, on the date following 1 year after their last date of attendance at your institution;

(ii) Were employed for at least 13 weeks, in an occupation for which you provided training, between the date they enrolled at your institution and the first date that is more than a year

after their last date of attendance at your institution; or

(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(3) The students who are used to determine your placement rate include only former students who—

(i) Were initially enrolled in an eligible program on at least a half-time basis;

(ii) Were originally scheduled, at the time of enrollment, to complete their educational programs during the same 12-month period used to calculate the low income rate; and

(iii) Remained in the program beyond the point at which a student would have received a 100 percent tuition refund from you.

(4) A student is not included in the calculation of your placement rate if that student, on the date that is 1 year after the student's originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(f) *Scheduled to complete.* In calculating a completion or placement rate under this section, the date on which a student is originally scheduled to complete a program is based on—

(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the program by a full-time student; or

(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the program if the student remained at that level of enrollment throughout the program.

(g) *Deadline for submitting an appeal.* (1) Within 30 days after you receive the notice of your loss of eligibility or of a rate described in paragraph (a)(2) of this section, you must send us your management's written assertion, as described in the Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility or of a rate described in paragraph (a)(2) of this section, you must send us the independent auditor's opinion described in paragraph (h) of this section.

(h) *Independent auditor's opinion.* (1) The independent auditor's opinion must state whether your management's written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with—

(i) The American Institute of Certified Public Accountants' (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended (these standards may be obtained by calling the AICPA's order department, at 1–888–777–7077); and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(i) *Determination.* You do not lose eligibility under § 668.206, and we do not provisionally certify you under § 668.16(m)(2)(i), if—

(1) Your independent auditor's opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor's opinion and your management's written assertion—

(i) Meet the requirements for an economically disadvantaged appeal; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor's opinion unacceptable.

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

[74 FR 55651, Oct. 28, 2009, as amended at 76 FR 52272, Aug. 22, 2011]

§ 668.214 Participation rate index appeals.

(a) *Eligibility.* (1) You do not lose eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if you bring an appeal in accordance with this section that demonstrates that your participation rate index for

that cohort's fiscal year is equal to or less than 0.0832.

(2) Subject to § 668.208(b), you do not lose eligibility under § 668.206(a)(2) if you bring an appeal in accordance with this section that demonstrates that your participation rate index for any of the three most recent cohorts' fiscal years is equal to or less than 0.0625.

(3) Subject to § 668.208(b), you are not placed on provisional certification under § 668.16(m)(2)(i) based on two cohort default rates that fail to satisfy the standard of administrative capability in § 668.16(m)(1)(ii) if you bring an appeal in accordance with this section that demonstrates that your participation rate index for either of those two cohorts' fiscal years is equal to or less than 0.0625.

(b) *Calculating your participation rate index.* (1) Except as provided in paragraph (b)(2) of this section, your participation rate index for a fiscal year is determined by multiplying your cohort default rate for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to attend your institution during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the cohort's fiscal year, by

(ii) The number of regular students who were enrolled at your institution on at least a half-time basis during any part of the same 12-month period.

(2) If your cohort default rate for a fiscal year is calculated as an average rate under § 668.202(d)(2), you may calculate your participation rate index for that fiscal year using either that average rate or the cohort default rate that would be calculated for the fiscal year alone using the method described in § 668.202(d)(1).

(c) *Deadline for submitting an appeal.* You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive—

(1) Notice of your loss of eligibility; or

(2) Notice under § 668.205 of a cohort default rate that equals or exceeds 30 percent but is less than or equal to 40 percent.

(d) *Determination.* (1) You do not lose eligibility under § 668.206 and we do not place you on provisional certification, if we determine that you meet the requirements for a participation rate index appeal.

(2) If we determine that your participation rate index for a fiscal year is equal to or less than 0.0832 or 0.0625, as applicable, under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.206(a)(2) or placement on provisional certification under § 668.16(m)(2)(i) that would be based on the official cohort default rate for that fiscal year.

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

[74 FR 55651, Oct. 28, 2009, as amended at 78 FR 65804, Nov. 1, 2013; 80 FR 67236, Oct. 30, 2015]

§ 668.215 Average rates appeals.

(a) *Eligibility.* (1) You may appeal a notice of a loss of eligibility under § 668.206(a)(1), based on one cohort default rate over 40 percent, if that cohort default rate is calculated as an average rate under § 668.202(d)(2).

(2) You may appeal a notice of a loss of eligibility under § 668.206(a)(2), based on three cohort default rates of 30 percent or greater, if at least two of those cohort default rates—

(i) Are calculated as average rates under § 668.202(d)(2); and

(ii) Would be less than 30 percent if calculated for the fiscal year alone using the method described in § 668.202(d)(1).

(b) *Deadline for submitting an appeal.* (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for an average rates appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your average rates appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* You do not lose eligibility under § 668.206 if we determine

that you meet the requirements for an average rates appeal.

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

§ 668.216 Thirty-or-fewer borrowers appeals.

(a) *Eligibility*. You may appeal a notice of a loss of eligibility under § 668.206 if 30 or fewer borrowers, in total, are included in the 3 most recent cohorts of borrowers used to calculate your cohort default rates.

(b) *Deadline for submitting an appeal*. (1) Before notifying you of your official cohort default rate, we make an initial determination about whether you qualify for a thirty-or-fewer borrowers appeal. If we determine that you qualify, we notify you of that determination at the same time that we notify you of your official cohort default rate.

(2) If you disagree with our initial determination, you must send us your thirty-or-fewer borrowers appeal, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination*. You do not lose eligibility under § 668.206 if we determine that you meet the requirements for a thirty-or-fewer borrowers appeal.

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

§ 668.217 Default prevention plans.

(a) *First year*. (1) If your cohort default rate is equal to or greater than 30 percent you must establish a default prevention task force that prepares a plan to—

(i) Identify the factors causing your cohort default rate to exceed the threshold;

(ii) Establish measurable objectives and the steps you will take to improve your cohort default rate;

(iii) Specify the actions you will take to improve student loan repayment, including counseling students on repayment options; and

(iv) Submit your default prevention plan to us.

(2) We will review your default prevention plan and offer technical assistance intended to improve student loan repayment.

(b) *Second year*. (1) If your cohort default rate is equal to or greater than 30 percent for two consecutive fiscal years, you must revise your default prevention plan and submit it to us for review.

(2) We may require you to revise your default prevention plan or specify actions you need to take to improve student loan repayment.

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

APPENDIX A TO SUBPART N OF PART 668—SAMPLE DEFAULT PREVENTION PLAN

This appendix is provided as a sample plan for those institutions developing a default prevention plan in accordance with § 668.217(a). It describes some measures you may find helpful in reducing the number of students that default on Federally funded loans. These are not the only measures you could implement when developing a default prevention plan.

I. CORE DEFAULT REDUCTION STRATEGIES

1. Establish your default prevention team by engaging your chief executive officer and relevant senior executive officials and enlisting the support of representatives from offices other than the financial aid office. Consider including individuals and organizations independent of your institution that have experience in preventing title IV loan defaults.

2. Consider your history, resources, dollars in default, and targets for default reduction to determine which activities will result in the most benefit to you and your students.

3. Define evaluation methods and establish a data collection system for measuring and verifying relevant default prevention statistics, including a statistical analysis of the borrowers who default on their loans.

4. Identify and allocate the personnel, administrative, and financial resources appropriate to implement the default prevention plan.

5. Establish annual targets for reductions in your rate.

6. Establish a process to ensure the accuracy of your rate.

II. ADDITIONAL DEFAULT REDUCTION STRATEGIES

1. Enhance the borrower's understanding of his or her loan repayment responsibilities through counseling and debt management activities.

2. Enhance the enrollment retention and academic persistence of borrowers through counseling and academic assistance.

3. Maintain contact with the borrower after he or she leaves your institution by using activities such as skip tracing to locate the borrower.

4. Track the borrower's delinquency status by obtaining reports from data managers and FFEL Program lenders.

5. Enhance student loan repayments through counseling the borrower on loan repayment options and facilitating contact between the borrower and the data manager or FFEL Program lender.

6. Assist a borrower who is experiencing difficulty in finding employment through career counseling, job placement assistance, and facilitating unemployment deferments.

7. Identify and implement alternative financial aid award policies and develop alternative financial resources that will reduce the need for student borrowing in the first 2 years of academic study.

III. STATISTICS FOR MEASURING PROGRESS

1. The number of students enrolled at your institution during each fiscal year.

2. The average amount borrowed by a student each fiscal year.

3. The number of borrowers scheduled to enter repayment each fiscal year.

4. The number of enrolled borrowers who received default prevention counseling services each fiscal year.

5. The average number of contacts that you or your agent had with a borrower who was in deferment or forbearance or in repayment status during each fiscal year.

6. The number of borrowers at least 60 days delinquent each fiscal year.

7. The number of borrowers who defaulted in each fiscal year.

8. The type, frequency, and results of activities performed in accordance with the default prevention plan.

Subpart O—Financial Assistance for Students With Intellectual Disabilities

SOURCE: 74 FR 55947, Oct. 29, 2009, unless otherwise noted.

§ 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:

(a) *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.

(b) *Student with an intellectual disability* means a student—

(1) With 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.

[74 FR 55947, Oct. 29, 2009, as amended at 82 FR 31913, July 11, 2017]

§ 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)

Subpart P [Reserved]

Subpart Q—Gainful Employment (GE) Programs

SOURCE: 79 FR 65007, Oct. 31, 2014, unless otherwise noted.

EFFECTIVE DATE NOTE: At 84 FR 31453, July 1, 2019, subpart Q consisting of §§ 668.401 through 668.415 is removed and reserved, effective July 1, 2020.

§ 668.401 Scope and purpose.

This subpart applies to an educational program offered by an eligible institution that prepares students for gainful employment in a recognized occupation, and establishes the rules and procedures under which—

(a) The Secretary determines that the program is eligible for title IV, HEA program funds;

(b) An institution reports information about the program to the Secretary; and

(c) An institution discloses information about the program to students and prospective students.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1231a)

§ 668.402 Definitions.

The following definitions apply to this subpart.

Annual earnings rate. The percentage of a GE program's annual loan payment compared to the annual earnings of the students who completed the program, as calculated under § 668.404.

Classification of instructional program (CIP) code. A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics (NCES). The CIP code for a program is six digits.

Cohort period. The two-year cohort period or the four-year cohort period, as applicable, during which those students who complete a program are identified in order to assess their loan debt and earnings. The Secretary uses the two-year cohort period when the number of students completing the program is 30 or more. The Secretary uses the four-year cohort period when the number of students completing the program in the two-year cohort period is less than 30 and when the number of students completing the program in the four-year cohort period is 30 or more.

Credential level. The level of the academic credential awarded by an institution to students who complete the program. For the purposes of this subpart, the undergraduate credential levels are: Undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate; and the graduate credential levels are graduate certificate (including a postgraduate certificate), master's degree, doctoral degree, and first-professional degree (e.g., MD, DDS, JD).

Debt-to-earnings rates (D/E rates). The discretionary income rate and annual earnings rate as calculated under § 668.404.

Discretionary income rate. The percentage of a GE program's annual loan payment compared to the discretionary income of the students who completed the program, as calculated under § 668.404.

Four-year cohort period. The cohort period covering four consecutive award years that are—

(1) The third, fourth, fifth, and sixth award years prior to the award year for which the D/E rates are calculated pursuant to § 668.404. For example, if D/E rates are calculated for award year 2014–2015, the four-year cohort period is award years 2008–2009, 2009–2010, 2010–2011, and 2011–2012; or

(2) For a program whose students are required to complete a medical or dental internship or residency, the sixth, seventh, eighth, and ninth award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2014–2015, the four-year cohort period is award years 2005–2006, 2006–2007, 2007–2008, and 2008–2009. For this purpose, a required medical or dental internship or residency is a supervised training program that—

(i) Requires the student to hold a degree as a doctor of medicine or osteopathy, or a doctor of dental science;

(ii) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(iii) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

Gainful employment program (GE program). An educational program offered by an institution under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level.

Length of the program. The amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

Metropolitan Statistical Area (MSA). The Metropolitan Statistical Area as published by the U.S. Office of Management and Budget and available at *www.census.gov/population/metro/* or its successor site.

Poverty Guideline. The Poverty Guideline for a single person in the continental United States as published by the U.S. Department of Health and Human Services and available at *http://aspe.hhs.gov/poverty* or its successor site.

Prospective student. An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a GE program or who has been contacted directly by the institution or by a third party on behalf of the institution about enrolling in a GE program.

Student. An individual who received title IV, HEA program funds for enrolling in the GE program.

Title IV loan. A loan authorized under the Federal Perkins Loan Program (Perkins Loan), the Federal Family Education Loan Program (FFEL Loan), or the William D. Ford Direct Loan Program (Direct Loan).

Two-year cohort period. The cohort period covering two consecutive award years that are—

(1) The third and fourth award years prior to the award year for which the D/E rates are calculated pursuant to § 668.404. For example, if D/E rates are calculated for award year 2014–2015, the two-year cohort period is award years 2010–2011 and 2011–2012; or

(2) For a program whose students are required to complete a medical or dental internship or residency, the sixth and seventh award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2014–2015, the two-year cohort period is award years 2007–2008 and 2008–2009. For this purpose, a required medical or dental internship or residency is a supervised training program that—

(i) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science;

(ii) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(iii) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.403 Gainful employment program framework.

(a) *General.* A program provides training that prepares students for gainful employment in a recognized occupation if the program—

(1) Satisfies the applicable certification requirements in § 668.414; and

(2) Is not an ineligible program under the D/E rates measure.

(b) *Debt-to-earnings rates (D/E rates).* For each award year and for each eligible GE program offered by an institution, the Secretary calculates two D/E rates, the discretionary income rate and the annual earnings rate, using the procedures in §§ 668.404 through 668.406.

(c) *Outcomes of the D/E rates measure.* (1) A GE program is ''passing'' the D/E rates measure if—

(i) Its discretionary income rate is less than or equal to 20 percent; or

(ii) Its annual earnings rate is less than or equal to eight percent.

(2) A GE program is ''failing'' the D/E rates measure if—

(i) Its discretionary income rate is greater than 30 percent or the income for the denominator of the rate (discretionary earnings) is negative or zero; and

(ii) Its annual earnings rate is greater than 12 percent or the denominator of the rate (annual earnings) is zero.

(3) A GE program is ''in the zone'' for the purpose of the D/E rates measure if it is not a passing GE program and its—

(i) Discretionary income rate is greater than 20 percent but less than or equal to 30 percent; or

(ii) Annual earnings rate is greater than eight percent but less than or equal to 12 percent.

(4) For the purpose of the D/E rates measure, subject to paragraph (c)(5) of this section, a GE program becomes ineligible if the program either—

(i) Is failing the D/E rates measure in two out of any three consecutive award years for which the program's D/E rates are calculated; or

(ii) Has a combination of zone and failing D/E rates for four consecutive award years for which the program's D/E rates are calculated.

(5) If the Secretary does not calculate or issue D/E rates for a program for an award year, the program receives no result under the D/E rates measure for that award year and remains in the same status under the D/E rates measure as the previous award year; provided that if the Secretary does not calculate D/E rates for the program for four or more consecutive award years, the Secretary disregards the program's D/E rates for any award year prior to the four-year period in determining the program's eligibility.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.404 Calculating D/E rates.

(a) *General*. Except as provided in paragraph (f) of this section, for each award year, the Secretary calculates D/E rates for a GE program as follows:

(1) Discretionary income rate = annual loan payment/(the higher of the mean or median annual earnings − (1.5 × Poverty Guideline)). For the purposes of this paragraph, the Secretary applies the Poverty Guideline for the calendar year immediately following the calendar year for which annual earnings are obtained under paragraph (c) of this section.

(2) Annual earnings rate = annual loan payment/the higher of the mean or median annual earnings.

(b) *Annual loan payment*. The Secretary calculates the annual loan payment for a GE program by—

(1)(i) Determining the median loan debt of the students who completed the program during the cohort period, based on the lesser of the loan debt incurred by each student as determined under paragraph (d)(1) of this section and the total amount for tuition and fees and books, equipment, and supplies for each student as determined under paragraph (d)(2) of this section;

(ii) Removing, if applicable, the appropriate number of highest loan debts as described in § 668.405(e)(2); and

(iii) Calculating the median of the remaining amounts.

(2) Amortizing the median loan debt—

(i)(A) Over a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate;

(B) Over a 15-year repayment period for a program that leads to a bachelor's degree or a master's degree; or

(C) Over a 20-year repayment period for a program that leads to a doctoral or first-professional degree; and

(ii) Using an annual interest rate that is the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during—

(A) The three-year period prior to the end of the cohort period, for undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students;

(B) The three-year period prior to the end of the cohort period, for graduate

certificate programs and master's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students;

(C) The six-year period prior to the end of the cohort period, for bachelor's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students; and

(D) The six-year period prior to the end of the cohort period, for doctoral programs and first professional degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

NOTE TO PARAGRAPH (b)(2)(ii): For example, for an undergraduate certificate program, if the two-year cohort period is award years 2010–2011 and 2011–2012, the interest rate would be the average of the interest rates for the years from 2009–2010 through 2011–2012.

(c) *Annual earnings.* (1) The Secretary obtains from the Social Security Administration (SSA), under § 668.405, the most currently available mean and median annual earnings of the students who completed the GE program during the cohort period and who are not excluded under paragraph (e) of this section; and

(2) The Secretary uses the higher of the mean or median annual earnings to calculate the D/E rates.

(d) *Loan debt and assessed charges.* (1) In determining the loan debt for a student, the Secretary includes—

(i) The amount of title IV loans that the student borrowed (total amount disbursed less any cancellations or adjustments) for enrollment in the GE program (Federal PLUS Loans made to parents of dependent students, Direct PLUS Loans made to parents of dependent students, and Direct Unsubsidized Loans that were converted from TEACH Grants are not included);

(ii) Any private education loans as defined in 34 CFR 601.2, including private education loans made by the institution, that the student borrowed for enrollment in the program and that were required to be reported by the institution under § 668.411; and

(iii) The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any GE program attended at the institution that the student is obligated to repay after completing the GE program, including extensions of credit described in clauses (1) and (2) of the definition of, and excluded from, the term ''private education loan'' in 34 CFR 601.2;

(2) The Secretary attributes all of the loan debt incurred by the student, and attributes the amount reported for the student under § 668.411(a)(2)(iv) and (v), for enrollment in any—

(i) Undergraduate GE program at the institution to the highest credentialed undergraduate GE program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; and

(ii) Graduate GE program at the institution to the highest credentialed graduate GE program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; and

(3) The Secretary excludes any loan debt incurred by the student for enrollment in programs at other institutions. However, the Secretary may include loan debt incurred by the student for enrollment in GE programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(e) *Exclusions.* The Secretary excludes a student from both the numerator and the denominator of the D/E rates calculation if the Secretary determines that—

(1) One or more of the student's title IV loans were in a military-related deferment status at any time during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(2) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(3) The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(4) For undergraduate GE programs, the student completed a higher credentialed undergraduate GE program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section;

(5) For graduate GE programs, the student completed a higher credentialed graduate GE program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; or

(6) The student died.

(f) *D/E rates not issued.* The Secretary does not issue draft or final D/E rates for a GE program under § 668.405 if—

(1) After applying the exclusions in paragraph (e) of this section, fewer than 30 students completed the program during the two-year cohort period and fewer than 30 students completed the program during the four-year cohort period; or

(2) SSA does not provide the mean and median earnings for the program as provided under paragraph (c) of this section.

(g) *Transition period.* (1) The transition period is determined by the length of the GE program for which the Secretary calculates D/E rates under this subpart. The transition period is—

(i) The first five award years for which the Secretary calculates D/E rates under this subpart if the length of the program is one year or less;

(ii) The first six award years for which the Secretary calculates D/E rates under this subpart if the length of the program is between one and two years; and

(iii) The first seven award years for which the Secretary calculates D/E rates if the length of the program is more than two years.

(2) If a GE program is failing or in the zone based on its draft D/E rates for any award year during the transition period, the Secretary calculates transitional draft D/E rates for that award year by using—

(i) The median loan debt of the students who completed the program during the most recently completed award year; and

(ii) The earnings used to calculate the draft D/E rates under paragraph (c) of this section.

(3) For any award year for which the Secretary calculates transitional draft D/E rates for a program, the Secretary determines the final D/E rates for the program based on the lower of the draft or transitional draft D/E rates.

(4) An institution may challenge or appeal the draft or transitional draft D/E rates, or both, under the procedures in § 668.405 and § 668.406, respectively.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.405 Issuing and challenging D/E rates.

(a) *Overview.* For each award year, the Secretary determines the D/E rates for a GE program at an institution by—

(1) Creating a list of the students who completed the program during the cohort period and providing the list to the institution, as provided in paragraph (b) of this section;

(2) Allowing the institution to correct the information about the students on the list, as provided in paragraph (c) of this section;

(3) Obtaining from SSA the mean and median annual earnings of the students on the list, as provided in paragraph (d) of this section;

(4) Calculating draft D/E rates and providing them to the institution, as provided in paragraph (e) of this section;

(5) Allowing the institution to challenge the median loan debt used to calculate the draft D/E rates, as provided in paragraph (f) of this section;

(6) Calculating final D/E rates and providing them to the institution, as provided in paragraph (g) of this section; and

(7) Allowing the institution to appeal the final D/E rates as provided in § 668.406.

(b) *Creating the list of students.* (1) The Secretary selects the students to be included on the list by—

(i) Identifying the students who completed the program during the cohort

period from the data provided by the institution under § 668.411; and

(ii) Indicating which students would be removed from the list under § 668.404(e) and the specific reason for the exclusion.

(2) The Secretary provides the list to the institution and states which cohort period was used to select the students.

(c) *Institutional corrections to the list.* (1) The Secretary presumes that the list of students and the identity information for those students are correct unless, as set forth in procedures established by the Secretary, the institution provides evidence to the contrary satisfactory to the Secretary. The institution bears the burden of proof that the list is incorrect.

(2) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(i) Provide evidence showing that a student should be included on or removed from the list pursuant to § 668.404(e); or

(ii) Correct or update a student's identity information and the student's program attendance information.

(3) After the 45-day period expires, the institution may no longer seek to correct the list of students or revise the identity or program information of those students included on the list.

(4) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the Secretary accepts the correction, the Secretary uses the corrected information to create the final list. The Secretary provides the institution with the final list and indicates the cohort period or cohort periods used to create the final list.

(d) *Obtaining earnings data.* The Secretary submits the final list to SSA. For the purposes of this section, SSA returns to the Secretary—

(1) The mean and median annual earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(2) The number, but not the identities, of students on the list that SSA could not match.

(e) *Calculating draft D/E rates.* (1)(i) If the SSA earnings data includes reports from records of earnings on at least 30 students, the Secretary uses the higher of the mean or median annual earnings provided by SSA to calculate draft D/E rates for a GE program, as provided in § 668.404.

(ii) If the SSA earnings data includes reports from records of earnings on fewer than 30 but at least 10 students, the Secretary uses the earnings provided by SSA only for the purpose of disclosure under § 668.412(a)(13).

(2) If SSA reports that it was unable to match one or more of the students on the final list, the Secretary does not include in the calculation of the median loan debt the same number of students with the highest loan debts as the number of students whose earnings SSA did not match. For example, if SSA is unable to match three students out of 100 students, the Secretary orders by amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts.

(3)(i) The Secretary notifies the institution of the draft D/E rates for the program and provides the mean and median annual earnings obtained from SSA and the individual student loan information used to calculate the rates, including the loan debt that was used in the calculation for each student.

(ii) The draft D/E rates and the data described in paragraphs (b) through (e) of this section are not considered public information.

(f) *Institutional challenges to draft D/E rates.* (1) The Secretary presumes that the loan debt information used to calculate the median loan debt for the program under § 668.404 is correct unless the institution provides evidence satisfactory to the Secretary, as provided in paragraph (f)(2) of this section, that the information is incorrect. The institution bears the burden of proof to show that the loan debt information is incorrect and to show how it should be corrected.

(2) No later than 45 days after the Secretary notifies an institution of the draft D/E rates for a program, the institution may challenge the accuracy of the loan debt information that the

Secretary used to calculate the median loan debt for the program under § 668.404 by submitting evidence, in a format and through a process determined by the Secretary, that demonstrates that the median loan debt calculated by the Secretary is incorrect.

(3) In a challenge under this section, the Secretary does not consider—

(i) Any objection to the mean or median annual earnings that SSA provided to the Secretary;

(ii) More than one challenge to the student-specific data on which draft D/E rates are based for a program for an award year; or

(iii) Any challenge that is not timely submitted.

(4) The Secretary considers the evidence provided by an institution challenging the median loan debt and notifies the institution of whether the challenge is accepted or the reasons why the challenge is not accepted.

(5) If the information from an accepted challenge changes the median loan debt of the program, the Secretary recalculates the program's draft D/E rates.

(6) Except as provided under § 668.406, an institution that does not timely challenge the draft D/E rates for a program waives any objection to those rates.

(g) *Final D/E rates.* (1) After expiration of the 45-day period and subject to resolution of any challenge under paragraph (f) of this section, a program's draft D/E rates constitute its final D/E rates.

(2) The Secretary informs the institution of the final D/E rates for each of its GE programs by issuing the notice of determination described in § 668.409(a).

(3) After the Secretary provides the notice of determination to the institution, the Secretary may publish the final D/E rates for the program.

(h) *Conditions for corrections and challenges.* An institution must ensure that any material that it submits to make any correction or challenge under this section is complete, timely, accurate, and in a format acceptable to the Secretary and consistent with any instructions provided to the institution with the notice of its draft D/E rates and the notice of determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.406 D/E rates alternate earnings appeals.

(a) *General.* If a GE program is failing or in the zone under the D/E rates measure, an institution may file an alternate earnings appeal to request recalculation of the program's most recent final D/E rates issued by the Secretary. The alternate earnings must be from the same calendar year for which the Secretary obtained earnings data from SSA to calculate the final D/E rates under § 668.404.

(b) *Basis for appeals.* (1) The institution may use alternate earnings from an institutional survey conducted under paragraph (c) of this section, or from a State-sponsored data system under paragraph (d) of this section, to recalculate the program's final D/E rates and file an appeal if by using the alternate earnings—

(i) For a program that was failing the D/E rates measure, the program is passing or in the zone with respect to the D/E rates measure; or

(ii) For a program that was in the zone for the purpose of the D/E rates measure, the program is passing the D/E rates measure.

(2) When submitting its appeal of the final D/E rates, the institution must—

(i) Use the annual loan payment used in the calculation of the final D/E rates; and

(ii) Use the higher of the mean or median alternate earnings.

(3) The institution must include in its appeal the alternate earnings of all the students who completed the program during the same cohort period that the Secretary used to calculate the final D/E rates under § 668.404 or a comparable cohort period, provided that the institution may elect—

(i) If conducting an alternate earnings survey, to exclude from the survey, in accordance with the standards established by NCES, all or some of the students excluded from the D/E rates calculation under § 668.404(e); or

(ii) If obtaining annual earnings data from one or more State-sponsored data systems, and in accordance with paragraph (d)(2) of this section, to exclude

from the list of students submitted to the administrator of the State-administered data system all or some of the students excluded from the D/E rates calculation under § 668.404(e).

(c) *Survey requirements for appeals.* An institution must—

(1) In accordance with the standards included on an Earnings Survey Form developed by NCES, conduct a survey to obtain annual earnings information of the students described in paragraph (b)(3) of this section. The Secretary will publish in the FEDERAL REGISTER the Earnings Survey Form that will include a pilot-tested universe survey as well as the survey standards. An institution is not required to use the Earnings Survey Form but, in conducting a survey under this section, must adhere to the survey standards and present to the survey respondent in the same order and same manner the same survey items, included in the Earnings Survey Form; and

(2) Submit to the Secretary as part of its appeal—

(i) A certification signed by the institution's chief executive officer attesting that the survey was conducted in accordance with the survey standards in the Earnings Survey Form, and that the mean or median earnings used to recalculate the D/E rates was accurately determined from the survey results;

(ii) An examination-level attestation engagement report prepared by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the requirements set forth in the NCES Earnings Survey Form. The attestation must be conducted in accordance with the attestation standards contained in the Government Accountability Office's Government Auditing Standards promulgated by the Comptroller General of the United States (available at *www.gao.gov/yellowbook/overview* or its successor site), and with procedures for attestations contained in guides developed by and available from the Department of Education's Office of Inspector General; and

(iii) Supporting documentation requested by the Secretary.

(d) *State-sponsored data system requirements for appeals.* An institution must—

(1) Obtain annual earnings data from one or more State-sponsored data systems by submitting a list of the students described in paragraph (b)(3) of this section to the administrator of each State-sponsored data system used for the appeal;

(2) Demonstrate that annual earnings data were obtained for more than 50 percent of the number of students in the cohort period not excluded pursuant to paragraph (b)(3) of this section, and that number of students must be 30 or more; and

(3) Submit as part of its appeal—

(i) A certification signed by the institution's chief executive officer attesting that it accurately used the State-provided earnings data to recalculate the D/E rates; and

(ii) Supporting documentation requested by the Secretary.

(e) *Appeals procedure.* (1) For any appeal under this section, in accordance with procedures established by the Secretary and provided in the notice of draft D/E rates under § 668.405 and the notice of determination under § 668.409, the institution must—

(i) Notify the Secretary of its intent to submit an appeal no earlier than the date that the Secretary provides the institution the draft D/E rates under § 668.405(e)(3), but no later than 14 days after the date the Secretary issues the notice of determination under § 668.409(a) informing the institution of the final D/E rates under § 668.405(g); and

(ii) Submit the recalculated D/E rates, all certifications, and specified supporting documentation related to the appeal no later than 60 days after the date the Secretary issues the notice of determination.

(2) An institution that timely submits an appeal that meets the requirements of this section is not subject to any consequences under § 668.410 based on the D/E rates under appeal while the Secretary considers the appeal. If the Secretary has published final D/E rates under § 668.405(g), the program's final D/E rates will be annotated to indicate that they are under appeal.

(3) An institution that does not submit a timely appeal waives its right to

appeal the GE program's failing or zone D/E rates for the relevant award year.

(f) *Appeals determinations.* (1) *Appeals denied.* If the Secretary denies an appeal, the Secretary notifies the institution of the reasons for denying the appeal, and the program's final D/E rates previously issued in the notice of determination under § 668.409(a) remain the final D/E rates for the program for the award year.

(2) *Appeals granted.* If the Secretary grants the appeal, the Secretary notifies the institution that the appeal is granted, that the recalculated D/E rates are the new final D/E rates for the program for the award year, and of any consequences of the recalculated rates under § 668.410. If the Secretary has published final D/E rates under § 668.405(g), the program's published rates will be updated to reflect the new final D/E rates.

(g) *Conditions for alternate earnings appeals.* An institution must ensure that any material that it submits to make an appeal under this section is complete, timely, accurate, and in a format acceptable to the Secretary and consistent with any instructions provided to the institution with the notice of determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§§ 668.407–408 [Reserved]

§ 668.409 Final determination of the D/E rates measure.

(a) *Notice of determination.* For each award year for which the Secretary calculates a D/E rates measure for a GE program, the Secretary issues a notice of determination informing the institution of the following:

(1) The final D/E rates for the program as determined under § 668.404, § 668.405, and, if applicable, § 668.406;

(2) The final determination by the Secretary of whether the program is passing, failing, in the zone, or ineligible, as described in § 668.403, and the consequences of that determination;

(3) Whether the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated for the program;

(4) Whether the institution is required to provide the student warning under § 668.410(a); and

(5) If the program's final D/E rates are failing or in the zone, instructions on how it may make an alternate earnings appeal pursuant to § 668.406.

(b) *Effective date of Secretary's final determination.* The Secretary's determination as to the D/E rates measure is effective on the date that is specified in the notice of determination. The determination, including, as applicable, the determination with respect to an appeal under § 668.406, constitutes the final decision of the Secretary with respect to the D/E rates measure and the Secretary provides for no further appeal of that determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.410 Consequences of the D/E rates measure.

(a) *Student warning*—(1) *Events requiring a warning to students and prospective students.* The institution must provide a warning with respect to a GE program to students and to prospective students for any year for which the Secretary notifies an institution that the program could become ineligible based on its final D/E rates measure for the next award year.

(2) *Content of warning.* Unless otherwise specified by the Secretary in a notice published in the FEDERAL REGISTER, the warning must—

(i) State that: ''This program has not passed standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.''; and

(ii) Refer students and prospective students to (and include a link for) College Navigator, its successor site, or another similar Federal resource, for information about other similar programs.

(iii) For warnings provided to enrolled students—

(A) Describe the academic and financial options available to students to continue their education in another program at the institution, including whether the students could transfer credits earned in the program to another program at the institution and which course credits would transfer, in the event that the program loses eligibility for title IV, HEA program funds;

(B) Indicate whether or not the institution will—

(*1*) Continue to provide instruction in the program to allow students to complete the program; and

(*2*) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and

(C) Explain whether the students could transfer credits earned in the program to another institution.

(3) *Consumer testing*. The Secretary will conduct consumer testing to determine how to make the student warning as meaningful as possible.

(4) *Alternative languages*. To the extent practicable, the institution must provide alternatives to the English-language student warning for those students and prospective students for whom English is not their first language.

(5) *Delivery to students*. (i) An institution must provide the warning required under this section in writing to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under § 668.409 by—

(A) Hand-delivering the warning as a separate document to the student individually or as part of a group presentation; or

(B) Sending the warning to the primary email address used by the institution for communicating with the student about the program.

(ii) If the institution sends the warning by email, the institution must—

(A) Ensure that the warning is the only substantive content in the email;

(B) Receive electronic or other written acknowledgement from the student that the student has received the email;

(C) Send the warning using a different address or method of delivery if the institution receives a response that the email could not be delivered; and

(D) Maintain records of its efforts to provide the warnings required by this section.

(6) *Delivery to prospective students* — (i) *General*. An institution must provide any warning required under this section to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or the third party acting on behalf of the student by—

(A) Hand-delivering the warning as a separate document to the prospective student or third party individually, or as part of a group presentation;

(B) Sending the warning to the primary email address used by the institution for communicating with the prospective student or third party about the program;

(C) Providing the prospective student or third party a copy of the disclosure template as required by § 668.412(e) that includes the student warning required by this section; or

(D) Providing the warning orally to the student or third party if the contact is by telephone.

(ii) *Special warning requirements before enrolling a prospective student*. (A) Before an institution enrolls, registers, or enters into a financial commitment with a prospective student with respect to the program, the institution must provide any warning required under this section to the prospective student in the manner prescribed in paragraph (a)(6)(i)(A) through (C) of this section.

(B) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than—

(*1*) Three business days after the institution first provides the student warning to the prospective student; or

(*2*) If more than 30 days have passed from the date the institution first provided the student warning to the prospective student, three business days after the institution provides another warning as required by this paragraph.

(iii) *Email delivery and acknowledgement*. If the institution sends the warning to the prospective student or the

third party by email, including by providing the prospective student or third party an electronic copy of the disclosure template, the institution must—

(A) Ensure that the warning is the only substantive content in the email;

(B) Receive electronic or other written acknowledgement from the prospective student or third party that the student or third party has received the email;

(C) Send the warning using a different address or method of delivery if the institution receives a response that the email could not be delivered; and

(D) Maintain records of its efforts to provide the warning required under this section.

(7) *Disclosure template*. Within 30 days of receiving notice from the Secretary that the institution must provide a student warning for the program, the institution must update the disclosure template described in § 668.412 to include the warning in paragraph (a)(2) of this section or such other warning specified by the Secretary in a notice published in the FEDERAL REGISTER.

(b) *Restrictions*—(1) *Ineligible program*. Except as provided in § 668.26(d), an institution may not disburse title IV, HEA program funds to students enrolled in an ineligible program.

(2) *Period of ineligibility*. (i) An institution may not seek to reestablish the eligibility of a failing or zone program that it discontinued voluntarily, reestablish the eligibility of a program that is ineligible under the D/E rates measure, or establish the eligibility of a program that is substantially similar to the discontinued or ineligible program, until three years following the date specified in the notice of determination informing the institution of the program's ineligibility or the date the institution discontinued the failing or zone program.

(ii) An institution may not seek to reestablish the eligibility of a program that it discontinued voluntarily after receiving draft D/E rates that are failing or in the zone, or establish the eligibility of a program that is substantially similar to the discontinued program, until—

(A) Final D/E rates that are passing are issued for the program for that award year; or

(B) If the final D/E rates for the program for that award year are failing or in the zone, three years following the date the institution discontinued the program.

(iii) For the purposes of this section, an institution voluntarily discontinues a program on the date the institution provides written notice to the Secretary that it relinquishes the title IV, HEA program eligibility of that program.

(iv) For the purposes of this subpart, a program is substantially similar to another program if the two programs share the same four-digit CIP code. The Secretary presumes a program is not substantially similar to another program if the two programs have different four-digit CIP codes but the institution must provide an explanation of how the new program is not substantially similar to the ineligible or voluntarily discontinued program with its certification under § 668.414.

(3) *Restoring eligibility*. An ineligible program, or a failing or zone program that an institution voluntarily discontinues, remains ineligible until the institution establishes the eligibility of that program under § 668.414(c).

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, 1099c)

§ 668.411 Reporting requirements for GE programs.

(a) In accordance with procedures established by the Secretary, an institution must report—

(1) For each student enrolled in a GE program during an award year who received title IV, HEA program funds for enrolling in that program—

(i) Information needed to identify the student and the institution;

(ii) The name, CIP code, credential level, and length of the program;

(iii) Whether the program is a medical or dental program whose students are required to complete an internship or residency, as described in § 668.402;

(iv) The date the student initially enrolled in the program;

(v) The student's attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) in the program during the award year; and

(vi) The student's enrollment status (e.g., full-time, three-quarter time,

half-time, less than half-time) as of the first day of the student's enrollment in the program;

(2) If the student completed or withdrew from the GE program during the award year—

(i) The date the student completed or withdrew from the program;

(ii) The total amount the student received from private education loans, as described in § 668.404(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;

(iii) The total amount of institutional debt, as described in § 668.404(d)(1)(iii), the student owes any party after completing or withdrawing from the program;

(iv) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program; and

(v) The total amount of the allowances for books, supplies, and equipment included in the student's title IV Cost of Attendance (COA) for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution;

(3) If the institution is required by its accrediting agency or State to calculate a placement rate for either the institution or the program, or both, the placement rate for the program, calculated using the methodology required by that accrediting agency or State, and the name of that accrediting agency or State; and

(4) As described in a notice published by the Secretary in the FEDERAL REGISTER, any other information the Secretary requires the institution to report.

(b)(1) An institution must report the information required under paragraphs (a)(1) and (2) of this section no later than—

(i) July 31, following the date these regulations take effect, for the second through seventh award years prior to that date;

(ii) For medical and dental programs that require an internship or residency, July 31, following the date these regulations take effect for the second through eighth award years prior to that date; and

(iii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes different dates in a notice published in the FEDERAL REGISTER.

(2) An institution must report the information required under paragraph (a)(3) of this section on the date and in the manner prescribed by the Secretary in a notice published in the FEDERAL REGISTER.

(3) For any award year, if an institution fails to provide all or some of the information in paragraph (a) of this section to the extent required, the institution must provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1231a)

§ 668.412 Disclosure requirements for GE programs.

(a) *Disclosure template.* An institution must use the disclosure template provided by the Secretary to disclose information about each of its GE programs to enrolled and prospective students. The Secretary will conduct consumer testing to determine how to make the disclosure template as meaningful as possible. The Secretary identifies the information that must be included in the template in a notice published in the FEDERAL REGISTER. That information may include, but is not limited to:

(1) The primary occupations (by name and SOC code) that the program prepares students to enter, along with links to occupational profiles on O*NET (*www.onetonline.org*) or its successor site.

(2) As calculated by the Secretary under § 668.413, the program's completion rates for full-time and less-than-full-time students and the program's withdrawal rates.

(3) The length of the program in calendar time (i.e., weeks, months, years).

(4) The number of clock or credit hours or equivalent, as applicable, in the program.

(5) The total number of individuals enrolled in the program during the most recently completed award year.

(6) As calculated by the Secretary under § 668.413, the loan repayment rate

for any one or all of the following groups of students who entered repayment on title IV loans during the two-year cohort period:

(i) All students who enrolled in the program.

(ii) Students who completed the program.

(iii) Students who withdrew from the program.

(7) The total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the length of the program.

(8) The placement rate for the program, if the institution is required by its accrediting agency or State to calculate a placement rate either for the program or the institution, or both, using the required methodology of that accrediting agency or State.

(9) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a title IV loan or a private loan for enrollment in the program.

(10) As calculated by the Secretary, the median loan debt as determined under § 668.413 of any one or all of the following groups:

(i) Those students who completed the program during the most recently completed award year.

(ii) Those students who withdrew from the program during the most recently completed award year.

(iii) All of the students described in paragraphs (a)(10)(i) and (ii) of this section.

(11) As provided by the Secretary, the mean or median earnings of any one or all of the following groups of students:

(i) Students who completed the program during the cohort period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.

(ii) Students who were in withdrawn status at the end of the cohort period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.

(iii) All of the students described in paragraph (a)(11)(i) and (ii) of this section.

(12) As calculated by the Secretary under § 668.413, the most recent program cohort default rate.

(13) As calculated by the Secretary under § 668.404, the most recent annual earnings rate.

(14)(i) Whether the program does or does not satisfy—

(A) The applicable educational prerequisites for professional licensure or certification in each State within the institution's MSA; and

(B) The applicable educational prerequisites for professional licensure or certification in any other State for which the institution has made a determination regarding such requirements.

(ii) For any States not described in paragraph (a)(14)(i) of this section, a statement that the institution has not made a determination with respect to the licensure or certification requirements of those States.

(15) Whether the program is programmatically accredited and the name of the accrediting agency.

(16) A link to the U.S. Department of Education's College Navigator Web site, or its successor site, or other similar Federal resource.

(b) *Disclosure updates.* (1) In accordance with procedures and timelines established by the Secretary, the institution must update at least annually the information contained in the disclosure template with the most recent data available for each of its GE programs.

(2) The institution must update the disclosure template to include any student warning as required under § 668.410(a)(7).

(c) *Program Web pages.* (1) On any Web page containing academic, cost, financial aid, or admissions information about a GE program maintained by or on behalf of an institution, the institution must provide the disclosure template for that program or a prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template for that program.

(2) The Secretary may require the institution to modify a Web page if it provides a link to the disclosure template and the link is not prominent, readily accessible, clear, conspicuous, and direct.

(d) *Promotional materials.* (1) All promotional materials made available by or on behalf of an institution to prospective students that identify a GE

program by name or otherwise promote the program must include—

(i) The disclosure template in a prominent manner; or

(ii) Where space or airtime constraints would preclude the inclusion of the disclosure template, the Web address (URL) of, or the direct link to, the disclosure template, provided that the URL or link is prominent, readily accessible, clear, conspicuous, and direct and the institution identifies the URL or link as ''Important Information about the educational debt, earnings, and completion rates of students who attended this program'' or as otherwise specified by the Secretary in a notice published in the FEDERAL REGISTER.

(2) Promotional materials include, but are not limited to, an institution's catalogs, invitations, flyers, billboards, and advertising on or through radio, television, print media, the Internet, and social media.

(3) The institution must ensure that all promotional materials, including printed materials, about a GE program are accurate and current at the time they are published, approved by a State agency, or broadcast.

(e) *Direct distribution to prospective students.* (1) Before a prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution, the institution must provide the prospective student or a third party acting on behalf of the prospective student, as a separate document, a copy of the disclosure template.

(2) The disclosure template may be provided to the prospective student or third party by—

(i) Hand-delivering the disclosure template to the prospective student or third party individually or as part of a group presentation; or

(ii) Sending the disclosure template to the primary email address used by the institution for communicating with the prospective student or third party about the program.

(3) If the institution hand-delivers the disclosure template to the prospective student or third party, it must obtain written confirmation from the prospective student or third party that the prospective student or third party received a copy of the disclosure template.

(4) If the institution sends the disclosure template to the prospective student or third party by email, the institution must—

(i) Ensure that the disclosure template is the only substantive content in the email;

(ii) Receive electronic or other written acknowledgement from the prospective student or third party that the prospective student or third party received the email;

(iii) Send the disclosure template using a different address or method of delivery if the institution receives a response that the email could not be delivered; and

(iv) Maintain records of its efforts to provide the disclosure template required under this section.

(f) *Disclosure templates by program length, location, or format.* (1) An institution that offers a GE program in more than one program length must publish a separate disclosure template for each length of the program. The institution must ensure that each disclosure template clearly identifies the applicable length of the program.

(2) An institution that offers a GE program in more than one location or format (e.g., full-time, part-time, accelerated) may publish a separate disclosure template for each location or format if doing so would result in clearer disclosures under paragraph (a) of this section. An institution that chooses to publish separate disclosure templates for each location or format must ensure that each disclosure template clearly identifies the applicable location or format.

(3) If an institution publishes a separate disclosure template for each length, or for each location or format, of the program, the institution must disaggregate, by length of the program, location, or format, those disclosures set forth in paragraphs (a)(4) and (5), (a)(7) through (9), and (a)(14) and as otherwise provided by the Secretary in a notice published in the FEDERAL REGISTER.

(g) *Privacy considerations.* An institution may not include on the disclosure template any of the disclosures described in paragraphs (a)(2), (a)(5), and

(a)(6) or paragraphs (a)(8) through (13) of this section if they are based on fewer than 10 students.

(h) *Implementation date.* Institutions must comply with the requirements of this section beginning January 1, 2017.

(Authority: 20 U.S.C. 1001, 1002, 1088)

[79 FR 65007, Oct. 31, 2014, as amended at 79 FR 71958, Dec. 4, 2014]

§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, mean and median earnings, and program cohort default rate.

(a)(1) *General.* Under the procedures in this section, the Secretary determines the completion rates, withdrawal rates, repayment rates, median loan debt, mean and median earnings, and program cohort default rate an institution must disclose under § 668.412 for each of its GE programs, notifies the institution of that information, and provides the institution an opportunity to challenge the calculations.

(2) *Enrollment cohort.* (i) Subject to paragraph (a)(2)(ii) of this section, for the purpose of calculating the completion and withdrawal rates under paragraph (b) of this section, the enrollment cohort is comprised of all the students who began enrollment in a GE program during an award year. For example, the students who began enrollment in a GE program during the 2014–2015 award year constitute the enrollment cohort for that award year.

(ii) A student is excluded from the enrollment cohort for the purpose of calculating the completion and withdrawal rates under paragraph (b) of this section if, while enrolled in the program, the student died or became totally and permanently disabled and was unable to continue enrollment on at least a half-time basis, as determined under the standards in 34 CFR 685.213.

(b) *Calculating completion rates, withdrawal rates, repayment rates, median loan debt, mean and median earnings, and program cohort default rate*— (1) *Completion rates.* For each enrollment cohort, the Secretary calculates the completion rates of a GE program as follows:

(i) For students whose enrollment status is full-time on the first day of the student's enrollment in the program:

$$\frac{\text{Number of full-time students in the enrollment cohort who completed the program within 100\% of the length of the program}}{\text{Number of full-time students in the enrollment cohort}}$$

and

$$\frac{\text{Number of full-time students in the enrollment cohort who completed the program within 150\% of the length of the program}}{\text{Number of full-time students in the enrollment cohort}}$$

(ii) For students whose enrollment status is less than full-time on the first day of the student's enrollment in the program:

$$\frac{\text{Number of less-than-full-time students in the enrollment cohort who completed the program within 200\% of the length of the program}}{\text{Number of less-than-full-time students in the enrollment cohort}}$$

and

$$\frac{\text{Number of less-than-full-time students in the enrollment cohort who completed the program within 300\% of the length of the program}}{\text{Number of less-than-full-time students in the enrollment cohort}}$$

(2) *Withdrawal rate.* For each enrollment cohort, the Secretary calculates two withdrawal rates for a GE program as follows:

(i) The percentage of students in the enrollment cohort who withdrew from the program within 100 percent of the length of the program;

(ii) The percentage of students in the enrollment cohort who withdrew from the program within 150 percent of the length of the program.

(3) *Loan repayment rate.* For an award year, the Secretary calculates a loan repayment rate for borrowers not excluded under paragraph (b)(3)(vi) of this section who enrolled in a GE program as follows:

$$\frac{\text{Number of borrowers paid in full plus number of borrowers in active repayment}}{\text{Number of borrowers entering repayment}}$$

(i) *Number of borrowers entering repayment.* The total number of borrowers who entered repayment during the two-year cohort period on FFEL or Direct Loans received for enrollment in the program.

(ii) *Number of borrowers paid in full.* Of the number of borrowers entering repayment, the number who have fully repaid all FFEL or Direct Loans received for enrollment in the program.

(iii) *Number of borrowers in active repayment.* Of the number of borrowers entering repayment, the number who, during the most recently completed

award year, made loan payments sufficient to reduce by at least one dollar the outstanding balance of each of the borrower's FFEL or Direct Loans received for enrollment in the program, including consolidation loans that include a FFEL or Direct Loan received for enrollment in the program, by comparing the outstanding balance of each loan at the beginning and end of the award year.

(iv) *Loan defaults.* A borrower who defaulted on a FFEL or Direct Loan is not included in the numerator of the loan repayment rate formula even if that loan has been paid in full or meets the definition of being in active repayment.

(v) *Repayment rates for borrowers who completed or withdrew.* The Secretary may modify the formula in this paragraph to calculate repayment rates for only those borrowers who completed the program or for only those borrowers who withdrew from the program.

(vi) *Exclusions.* For the award year the Secretary calculates the loan repayment rate for a program, the Secretary excludes a borrower from the repayment rate calculation if the Secretary determines that—

(A) One or more of the borrower's FFEL or Direct loans were in a military-related deferment status at any time during the most recently completed award year;

(B) One or more of the borrower's FFEL or Direct loans are either under consideration by the Secretary, or have been approved, for a discharge on the basis of the borrower's total and permanent disability, under 34 CFR 682.402 or 685.212;

(C) The borrower was enrolled in any other eligible program at the institution or at another institution during the most recently completed award year; or

(D) The borrower died.

(4) *Median loan debt for students who completed the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(i) who completed the GE program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(5) *Median loan debt for students who withdrew from the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(ii) who withdrew from the program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(6) *Median loan debt for students who completed and withdrew from the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(iii) who completed the GE program during the award year and those students who withdrew from the GE program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(7) *Mean and median earnings.* The Secretary calculates the mean and median earnings of a GE program as described in paragraphs (b)(8) through (b)(12) of this section.

(8) *Mean and median earnings for students who completed the GE program.* (i) The Secretary determines the mean and median earnings for the students who completed the GE program during the cohort period by—

(A) Creating a list of the students who completed the program during the cohort period and providing it to the institution, as provided in paragraph (b)(8)(ii) of this section;

(B) Allowing the institution to correct the information about the students on the list, as provided in paragraph (b)(8)(iii) of this section;

(C) Obtaining from SSA the median annual earnings of the students on the list, as provided in paragraph (b)(8)(iv) of this section; and

(D) Notifying the institution of the median annual earnings for the students on the list.

(ii) *Creating the list of students.* (A) The Secretary selects the students to be included on the list by—

(*1*) Identifying the students who were enrolled in the program and completed the program during the cohort period from the data provided by the institution under § 668.411; and

(*2*) Indicating which students would be removed from the list under paragraph (b)(11) of this section and the specific reason for the exclusion.

(B) The Secretary provides the list to the institution and states which cohort period was used to select the students.

(iii) *Institutional corrections to the list.* (A) The Secretary presumes that the list of students and the identity information for those students are correct unless the institution provides evidence to the contrary that is satisfactory to the Secretary. The institution bears the burden of proof that the list is incorrect.

(B) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(*1*) Provide evidence showing that a student should be included on or removed from the list pursuant to paragraph (b)(11) of this section or otherwise; or

(*2*) Correct or update a student's identity information and the student's program attendance information.

(C) After the 45-day period expires, the institution may no longer seek to correct the list of students or revise the identity or program information of those students included on the list.

(D) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the Secretary accepts the correction, the Secretary uses the corrected information to create the final list. The Secretary notifies the institution which students are included on the final list and the cohort period used to create the list.

(iv) *Obtaining earnings data.* If the final list includes 10 or more students, the Secretary submits the final list to SSA. For the purposes of this section, SSA returns to the Secretary—

(A) The mean and median earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(B) The number, but not the identities, of students on the list that SSA could not match.

(9) *Mean and median earnings for students who withdrew from the program.* (i) The Secretary determines the mean and median earnings for the students who withdrew from the program during the cohort period by—

(A) Creating a list of the students who were enrolled in the program but withdrew from the program during the cohort period and providing it to the institution, as provided in paragraph (b)(9)(ii) of this section;

(B) Allowing the institution to correct the information about the students on the list, as provided in paragraph (b)(9)(iii) of this section;

(C) Obtaining from SSA the median annual earnings of the students on the list, as provided in paragraph (b)(9)(iv) of this section; and

(D) Notifying the institution of the median annual earnings for the students on the list.

(ii) *Creating the list of students.* (A) The Secretary selects the students to be included on the list by—

(*1*) Identifying the students who were enrolled in the program but withdrew from the program during the cohort period from the data provided by the institution under § 668.411; and

(*2*) Indicating which students would be removed from the list under paragraph (b)(11) of this section and the specific reason for the exclusion.

(B) The Secretary provides the list to the institution and states which cohort period was used to select the students.

(iii) *Institutional corrections to the list.* (A) The Secretary presumes that the list of students and the identity information for those students are correct unless the institution provides evidence to the contrary that is satisfactory to the Secretary, in a format and process determined by the Secretary. The institution bears the burden of proof that the list is incorrect.

(B) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(*1*) Provide evidence showing that a student should be included on or removed from the list pursuant to paragraph (b)(11) of this section or otherwise; or

(*2*) Correct or update a student's identity information and the student's program attendance information.

(C) After the 45-day period expires, the institution may no longer seek to correct the list of students or revise

the identity or program information of those students included on the list.

(D) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the Secretary accepts the correction, the Secretary uses the corrected information to create the final list. The Secretary notifies the institution which students are included on the final list and the cohort period used to create the list.

(iv) *Obtaining earnings data.* If the final list includes 10 or more students, the Secretary submits the final list to SSA. For the purposes of this section SSA returns to the Secretary—

(A) The mean and median earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(B) The number, but not the identities, of students on the list that SSA could not match.

(10) *Mean and median earnings for students who completed and withdrew from the program.* The Secretary calculates the mean and median earnings for both the students who completed the program during the cohort period and students who withdrew from the program during the cohort period in accordance with paragraphs (b)(8) and (9) of this section.

(11) *Exclusions from calculations.* The Secretary excludes a student from the calculation of the mean and median earnings of a GE program if the Secretary determines that—

(i) One or more of the student's title IV loans were in a military-related deferment status at any time during the calendar year for which the Secretary obtains earnings information under this section;

(ii) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402 or 685.212;

(iii) The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under this section; or

(iv) The student died.

(12) *Mean and median earnings not calculated.* The Secretary does not calculate the mean and median earnings for a GE program if SSA does not provide the mean and median earnings for the program.

(13) *Program cohort default rate.* The Secretary calculates the program cohort default rate using the methodology and procedures set forth in subpart R of this part.

(c) *Notification to institutions.* The Secretary notifies the institution of the—

(1) Draft completion, withdrawal, and repayment rates calculated under paragraph (b)(1) through (3) of this section and the information the Secretary used to calculate those rates.

(2) Median loan debt of the students who completed the program, as described in paragraph (b)(4) of this section, the students who withdrew from the program, as described in paragraph (b)(5) of this section, and both the students who completed and withdrew from the program, as described in paragraph (b)(6) of this section.

(3) Mean and median earnings of the students who completed the program, as described in paragraph (b)(8) of this section, the students who withdrew from the program, as described in paragraph (b)(9) of this section, or both the students who completed the program and the students who withdrew from the program, as described in paragraph (b)(10) of this section, in each case during the cohort period.

(4) Draft program cohort default rate, as described in paragraph (b)(13) of this section.

(d) *Challenges to completion rates, withdrawal rates, repayment rates, median loan debt, mean and median earnings, and program cohort default rate*—(1) *Completion rates, withdrawal rates, repayment rates, and median loan debt.* (i) No later than 45 days after the Secretary notifies an institution of a GE program's draft completion rate, withdrawal rate, repayment rate, and median loan debt, the institution may challenge the accuracy of the information that the Secretary used to calculate the draft rates and the draft median loan debt by submitting, in a form prescribed by the Secretary, evidence

satisfactory to the Secretary demonstrating that the information was incorrect.

(ii) The Secretary considers any evidence provided by the institution challenging the accuracy of the information the Secretary used to calculate the rates and the median loan debt and notifies the institution whether the challenge is accepted or the reasons the challenge is not accepted. If the Secretary accepts the challenge, the Secretary uses the corrected data to calculate the rates or median loan debt.

(iii) An institution may challenge the Secretary's calculation of the completion rates, withdrawal rates, repayment rates, and median loan debt only once for an award year. An institution that does not timely challenge the rates or median loan debt waives any objection to the rates or median loan debt as stated in the notice.

(2) *Mean and median earnings.* The Secretary does not consider any challenges to the mean and median earnings calculated under this section.

(3) *Program cohort default rate.* The Secretary considers any challenges to the program cohort default rate under the procedures for challenges set forth in subpart R of this part.

(e) *Final calculations*—(1) *Completion rates, withdrawal rates, repayment rates, and median loan debt.* (i) After expiration of the 45-day period, and subject to resolution of any challenge under paragraph (d)(1) of this section, a program's draft completion rate, withdrawal rate, repayment rate, and median loan debt constitute the final rates and median loan debt for that program.

(ii) The Secretary informs the institution of the final completion rate, withdrawal rate, repayment rate, and median loan debt for each of its GE programs by issuing a notice of determination.

(iii) Unless paragraph (g) of this section applies, after the Secretary provides the notice of determination, the Secretary may publish the final completion rate, withdrawal rate, repayment rate, and median loan debt.

(2) *Mean and median earnings.* The mean and median earnings of a program calculated by the Secretary under this section constitute the final mean and median earnings for that program. After the Secretary provides the institution with the notice in paragraph (c) of this section, the Secretary may publish the final mean and median earnings for the program.

(3) *Program cohort default rate.* Subject to resolution of any challenge under subpart R of this part, a program's program cohort default rate calculated by the Secretary under subpart R constitutes the official program cohort default rate for that program. After the Secretary provides the notice of determination, the Secretary may publish the official program cohort default rate.

(f) *Conditions for challenges.* An institution must ensure that any material that it submits to make any corrections or challenge under this section is—

(1) Complete, timely, accurate, and in a format acceptable to the Secretary as described in this subpart and, with respect to program cohort default rate, in subpart R of this part; and

(2) Consistent with any instructions provided to the institution with the notice of its draft completion, withdrawal, and repayment rates, median loan debt, or program cohort default rate.

(g) *Privacy considerations.* The Secretary does not publish a determination described in paragraphs (b)(1) through (6), (b)(8) through (b)(10), and(b)(13) of this section, and an institution may not disclose a determination made by the Secretary or make any disclosures under those paragraphs, if the determination is based on fewer than 10 students.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

[79 FR 65007, Oct. 31, 2014, as amended at 79 FR 71958,71959, Dec. 4, 2014]

§ 668.414 Certification requirements for GE programs.

(a) *Transitional certification for existing programs.* (1) Except as provided in paragraph (a)(2) of this section, an institution must provide to the Secretary no later than December 31 of the year in which this regulation takes effect, in accordance with procedures established by the Secretary, a certification signed by its most senior executive officer that each of its currently

eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program participation agreement with the Secretary under § 668.14.

[, as amended at 79 FR 71958, Dec. 4, 2014]

(2) If an institution makes the certification in its program participation agreement pursuant to paragraph (b) of this section between July 1 and December 31 of the year in which this regulation takes effect, it is not required to provide the transitional certification under this paragraph.

(b) *Program participation agreement certification.* As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under § 668.14 that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. An institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that make an existing certification no longer accurate.

(c) *Establishing eligibility and disbursing funds.* (1) An institution establishes the eligibility for title IV, HEA program funds of a GE program by updating the list of the institution's eligible programs maintained by the Department to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (d) of this section. Except as provided in paragraph (c)(2) of this section, after the institution updates its list of eligible programs, the institution may disburse title IV, HEA program funds to students enrolled in that program.

(2) An institution may not update its list of eligible programs to include a GE program, or a GE program that is substantially similar to a failing or zone program that the institution voluntarily discontinued or became ineligible as described in § 668.410(b)(2), that was subject to the three-year loss of eligibility under § 668.410(b)(2), until that three-year period expires.

(d) *GE program eligibility certifications.* An institution certifies for each eligible program included on its Eligibility and Certification Approval Report, at the time and in the form specified in this section, that—

(1) Each eligible GE program it offers is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation;

(2) Each eligible GE program it offers is programmatically accredited, if such accreditation is required by a Federal governmental entity or by a governmental entity in the State in which the institution is located or in which the institution is otherwise required to obtain State approval under 34 CFR 600.9;

(3) For the State in which the institution is located or in which the institution is otherwise required to obtain State approval under 34 CFR 600.9, each eligible program it offers satisfies the applicable educational prerequisites for professional licensure or certification requirements in that State so that a student who completes the program and seeks employment in that State qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter; and

(4) For a program for which the institution seeks to establish eligibility for title IV, HEA program funds, the program is not substantially similar to a program offered by the institution that, in the prior three years, became ineligible for title IV, HEA program funds under the D/E rates measure or was failing, or in the zone with respect to, the D/E rates measure and was voluntarily discontinued by the institution. The institution must include with its certification an explanation of how the new program is not substantially

similar to any such ineligible or discontinued program.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, 1099c)

[, as amended at 79 FR 71958, Dec. 4, 2014]

§ 668.415 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1001, 1002, 1088)

Subpart R—Program Cohort Default Rate

SOURCE: 79 FR 65019, Oct. 31, 2014, unless otherwise noted.

EFFECTIVE DATE NOTE: At 84 FR 31453, July 1, 2019, subpart R, consisting of §§ 668.500 through 668.516, is removed and reserved, effective July 1, 2020.

§ 668.500 Purpose of this subpart.

General. The program cohort default rate is a measure of a GE program offered by the institution. This subpart describes how program cohort default rates are calculated, and how you may request changes to your program cohort default rates or appeal the rate. Under this subpart, you submit a ''challenge'' after you receive your draft program cohort default rate, and you request an ''adjustment'' or ''appeal'' after your official program cohort default rate is published.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.501 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

Cohort. Your cohort is a group of borrowers used to determine your program cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.502(b).

Data manager.

(1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Secretary's servicer is the data manager.

Days. In this subpart, ''days'' means calendar days.

Default. A borrower is considered to be in default for program cohort default rate purposes under the rules in § 668.502(c).

Draft program cohort default rate. Your draft program cohort default rate is a rate we issue, for your review, before we issue your official program cohort default rate. A draft program cohort default rate is used only for the purposes described in § 668.504.

Entering repayment. (1) Except as provided in paragraphs (2) and (3) of this definition, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of ''repayment period'') and in 34 CFR 685.207, as applicable.

(2) A Federal SLS Loan is considered to enter repayment—

(i) At the same time the borrower's Federal Stafford Loan enters repayment, if the borrower received the Federal SLS Loan and the Federal Stafford Loan during the same period of continuous enrollment; or

(ii) In all other cases, on the day after the student ceases to be enrolled at an institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if the loan is paid in full before the loan enters repayment under paragraphs (1) or (2) of this definition.

Fiscal year. A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

GE program. An educational program offered by an institution under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level, as defined in § 668.402.

Loan record detail report. The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official program cohort default rate.

Official program cohort default rate. Your official program cohort default rate is the program cohort default rate that we publish for you under § 668.505.

We. We are the Department, the Secretary, or the Secretary's designee.

You. You are an institution. We consider each reference to ''you'' to apply separately to the institution with respect to each of its GE programs.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.502 Calculating program cohort default rates.

(a) *General.* This section describes the four steps that we follow to calculate your program cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your GE program's cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 10, we also include the borrowers in your cohorts for the two most recent prior fiscal years for which we have data that identifies those borrowers who entered repayment during those fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default by the end of the second fiscal year following the fiscal year those borrowers entered repayment. If more than one cohort will be used to calculate your program cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your program cohort default rate.

(4) Fourth, we apply your program cohort default rate to your program at all of your locations—

(i) As you exist on the date you receive the notice of your official program cohort default rate; and

(ii) From the date on which you receive the notice of your official program cohort default rate until you receive our notice that the program cohort default rate no longer applies.

(b) *Identify the borrowers in a cohort.* (1) Except as provided in paragraph (b)(3) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford Loan, Federal SLS Loan, Direct Subsidized Loan, or Direct Unsubsidized Loan that they received to attend the GE program, or on the portion of a loan made under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program that is used to repay those loans.

(2) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(3) A TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not considered for the purpose of calculating and applying program cohort default rates.

(c) *Identify the borrowers in a cohort who are in default.* (1) Except as provided in paragraph (c)(2) of this section, a borrower in a cohort for a fiscal year is considered to be in default if, before the end of the second fiscal year following the fiscal year the borrower entered repayment—

(i) The borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default on a FFELP loan unless a claim for insurance has been paid on the loan by a guaranty agency or by us);

(ii) The borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower's failure persists for 360 days;

(iii) You or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort; or

(iv) The borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by

the Secretary or a Federal Consolidation Loan that is held by the Secretary and that was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation Loan was used to include the borrower in the cohort, and the borrower's failure persists for 360 days.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the second fiscal year following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) Repurchased by a lender because the claim for insurance was submitted or paid in error.

(d) *Calculate the program cohort default rate.* Except as provided in § 668.503, if there are—

(1)(i) Ten or more borrowers in your cohort for a fiscal year, your program cohort default rate is the percentage that is calculated by—

(ii) Dividing the number of borrowers in the cohort who are in default, as determined under paragraph (c) of this section, by the number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2) Fewer than 10 borrowers in your cohort for a fiscal year, your program cohort default rate is the percentage that is calculated by—

(i) For the first two years we attempt to calculate program cohort default rates under this part for a program, dividing the total number of borrowers in that program's cohort and in the two most recent prior cohorts for which we have data to identify the individuals comprising the cohort who are in default, as determined for each program's cohort under paragraph (c) of this section, by the total number of borrowers in that program cohort and the two most recent prior cohorts for which we have data to identify the individuals comprising the cohort, as determined for each program cohort under paragraph (b) of this section.

(ii) For other fiscal years, by dividing the total number of borrowers in that program cohort and in the two most recent prior program cohorts who are in default, as determined for each program cohort under paragraph (c) of this section, by the total number of borrowers in that program cohort and the two most recent prior program cohorts as determined for each program cohort under paragraph (b) of this section.

(iii) If we identify a total of fewer than ten borrowers under paragraph (d)(2) of this section, we do not calculate a draft program cohort default rate for that fiscal year.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.503 Determining program cohort default rates for GE programs at institutions that have undergone a change in status.

(a) *General.* (1) If you undergo a change in status identified in this section, the program cohort default rate of a GE program you offer is determined under this section.

(2) In determining program cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) [Reserved]

(4) If the program cohort default rate of a program offered by another institution is applicable to you under this section with respect to a program you offer, you may challenge, request an adjustment, or submit an appeal for the program cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.504 and 668.508.

(b) *Acquisition or merger of institutions.* If you offer a GE program and your institution acquires, or was created by the merger of, one or more institutions that participated independently in the title IV, HEA programs immediately before the acquisition or merger and that offered the same GE program, as identified by its 6-digit CIP code and credential level—

(1) Those program cohort default rates published for a GE program offered by any of these institutions before the date of the acquisition or merger are attributed to the GE program after the merger or acquisition; and

(2) Beginning with the first program cohort default rate published after the date of the acquisition or merger, the program cohort default rates for that GE program are determined by including in the calculation under § 668.502

the borrowers who were enrolled in that GE program from each institution that offered that program and that was involved in the acquisition or merger.

(c) [Reserved]

(d) *Branches or locations becoming institutions.* If you are a branch or location of an institution that is participating in the title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The program cohort default rates published for a GE program before the date of the change for your former parent institution are also applicable to you when you offer that program;

(2) Beginning with the first program cohort default rate published after the date of the change, the program cohort default rates for a GE program for the next three fiscal years are determined by including the applicable borrowers who were enrolled in the GE program from your institution and from your former parent institution (including all of its locations) in the calculation under § 668.502.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.504 Draft program cohort default rates and your ability to challenge before official program cohort default rates are issued.

(a) *General.* (1) We notify you of the draft program cohort default rate of a GE program before the official program cohort default rate of the GE program is calculated. Our notice includes the loan record detail report for the draft program cohort default rate.

(2) Except as provided in § 668.502(d)(2)(i), regardless of the number of borrowers included in the program cohort, the draft program cohort default rate of a GE program is always calculated using data for that fiscal year alone, using the method described in § 668.502(d)(1).

(3) The draft program cohort default rate of a GE program and the loan record detail report are not considered public information and may not be otherwise voluntarily released to the public by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in materials that we provide to you. If your challenge does not comply with these requirements, we may deny your challenge.

(b) *Incorrect data challenges.* (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager's position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your program cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment under § 668.509, or in an erroneous data appeal, under § 668.511.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.505 Notice of the official program cohort default rate of a GE program.

(a) We notify you of the official program cohort default rate of a GE program after we calculate it. After we send our notice to you, we publish a list of GE program cohort default rates for all institutions.

(b) If one or more borrowers who were enrolled in a GE program entered repayment in the fiscal year for which the rate is calculated, you will receive a loan record detail report as part of your notification package for that program.

(c) You have five business days, from the date of our notification, as posted on the Department's Web site, to report any problem with receipt of the notification package.

(d) Except as provided in paragraph (e), timelines for submitting, adjustments, and appeals begin on the sixth business day following the date of the notification package that is posted on the Department's Web site.

(e) If you timely report a problem with receipt of your notification package under paragraph (c) of this section and the Department agrees that the problem was not caused by you, the Department will extend the challenge, appeal, and adjustment deadlines and timeframes to account for a re-notification package.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.506 [Reserved]

§ 668.507 Preventing evasion of program cohort default rates.

In calculating the program cohort default rate of a GE program, the Secretary may include loan debt incurred by the borrower for enrolling in GE programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.508 General requirements for adjusting and appealing official program cohort default rates.

(a) [Reserved]

(b) *Limitations on your ability to dispute a program cohort default rate.* (1) You may not dispute the calculation of a program cohort default rate except as described in this subpart.

(2) You may not request an adjustment, or appeal a program cohort default rate, under § 668.509, § 668.510, § 668.511, or § 668.512, more than once.

(c) *Content and format of requests for adjustments and appeals.* We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor's opinions, management's written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in materials that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) *Our copies of your correspondence.* Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) *Requirements for data managers' responses.* (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) If a data manager sends us correspondence under this subpart that is not in a format acceptable to us, we may require the data manager to revise that correspondence's format, and we may prescribe a format for that data manager's subsequent correspondence with us.

(f) *Our decision on your request for adjustment or appeal.* (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.509 or § 668.510, or an appeal, under § 668.511 or § 668.512—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision before we notify you of your next official program cohort default rate.

(5) You may not seek judicial review of our determination of a program cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that program cohort default rate.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.509 Uncorrected data adjustments.

(a) *Eligibility*. You may request an uncorrected data adjustment for a GE program's most recent cohort of borrowers used to calculate the most recent official program cohort default rate if, in response to your challenge under § 668.504(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official program cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment*. You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination*. We recalculate your program cohort default rate, based on the corrected data, and correct the rate that is publicly released, if we determine that—

(1) In response to your challenge under § 668.504(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) are not reflected in your official program cohort default rate; and

(3) We agree that the data are incorrect.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.510 New data adjustments.

(a) *Eligibility*. You may request a new data adjustment for the most recent program cohort of borrowers, used to calculate the most recent official program cohort default rate for a GE program, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official program cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment*. (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.511(b)(6)(i) or § 668.512(c)(10)(i).

(c) *Determination*. If we determine that incorrect data were used to calculate your program cohort default rate, we recalculate your program cohort default rate based on the correct data and make corrections to the rate that is publicly released.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.511 Erroneous data appeals.

(a) *Eligibility*. Except as provided in § 668.508(b), you may appeal the calculation of a program cohort default rate if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data under § 668.504(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official program cohort default rates shows that the data have been newly included, excluded, or otherwise changed, and you dispute the accuracy of that data.

(b) *Deadlines for submitting an appeal*. (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your official program cohort default rate. Your request must include a description of the information in the program cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the program cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error. We respond to your request as set forth under paragraph (b)(2).

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request; or

(ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) or in § 668.510(b)(6)(i) or § 668.512(c)(10)(i).

(c) *Determination*. If we determine that incorrect data were used to calculate your program cohort default rate, we recalculate your program cohort default rate based on the correct data and correct the rate that is publicly released.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.512 Loan servicing appeals.

(a) *Eligibility*. Except as provided in § 668.508(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of the most recent program cohort default rate for a GE program.

(b) *Improper loan servicing*. For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the responsible party failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan.

(2) Attempt at least one phone call to the borrower.

(3) Send a final demand letter to the borrower.

(4) For a FFELP loan held by us or for a Direct Loan Program loan, document that skip tracing was performed if the applicable servicer determined that it did not have the borrower's current address.

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) *Deadlines for submitting an appeal.* (1) If the loan record detail report was not included with your official program cohort default rate notice, you must request it within 15 days after you receive the notice of your official program cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the loan record detail report.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in Social Security number order, and it must include the number of defaulted loans included in the program cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your program cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of

this section or in § 668.510(b)(6)(i) or § 668.511(b)(6)(i).

(d) *Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the program cohort default rate you are appealing.

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the program cohort default rate due to improper loan servicing or collection.

(e) *Loan servicing records.* Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our servicer that are used in determining your program cohort default rate.

(f) *Determination.* (1) We determine the number of loans, based on the loans included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of the program cohort default rate for the GE program, and correct the rate that is publicly released.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§§ 668.513–668.515 [Reserved]

§ 668.516 Fewer-than-ten-borrowers determinations.

We calculate an official program cohort default rate regardless of the number of borrowers included in the applicable cohort or cohorts. However, an institution may not disclose an official program cohort default rate under § 668.412(a)(12) or otherwise, if the number of borrowers in the applicable cohorts is fewer than ten.

(Authority: 20 U.S.C. 1001, 1002, 1088)

PART 669—LANGUAGE RESOURCE CENTERS PROGRAM

Subpart A—General

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AUTHORITY: 20 U.S.C. 1123, unless otherwise noted.

SOURCE: 55 FR 2773, Jan. 26, 1990, unless otherwise noted.

Subpart A—General

§ 669.1 What is the Language Resource Centers Program?

The Language Resource Centers Program makes awards, through grants or contracts, for the purpose of establishing, strengthening, and operating centers that serve as resources for improving the nation's capacity for teaching and learning foreign languages effectively.

(Authority: 20 U.S.C. 1123)

§ 669.2 Who is eligible to receive assistance under this program?

An institution of higher education or a combination of institutions of higher

education is eligible to receive an award under this part.

(Authority: 20 U.S.C. 1123)

§ 669.3 What activities may the Secretary fund?

Centers funded under this part must carry out activities to improve the teaching and learning of foreign languages. These activities must include effective dissemination efforts, whenever appropriate, and may include—

(a) The conduct and dissemination of research on new and improved methods for teaching foreign languages, including the use of advanced educational technology;

(b) The development and dissemination of new materials for teaching foreign languages, to reflect the results of research on effective teaching strategies;

(c) The development, application, and dissemination of performance testing that is appropriate for use in an educational setting to be used as a standard and comparable measurement of skill levels in foreign languages;

(d) The training of teachers in the administration and interpretation of foreign language performance tests, the use of effective teaching strategies, and the use of new technologies;

(e) A significant focus on the teaching and learning needs of the less commonly taught languages, including an assessment of the strategic needs of the United States, the determination of ways to meet those needs nationally, and the publication and dissemination of instructional materials in the less commonly taught languages;

(f) The development and dissemination of materials designed to serve as a resource for foreign language teachers at the elementary and secondary school levels; and

(g) The operation of intensive summer language institutes to train advanced foreign language students, to provide professional development, and to improve language instruction through preservice and inservice language training for teachers.

(Authority: 20 U.S.C. 1123)

[64 FR 7741, Feb. 16, 1999]

§ 669.4 What regulations apply?

The following regulations apply to this program:

(a) The regulations in 34 CFR part 655.

(b) The regulations in this part 669.

(Authority: 20 U.S.C. 1123)

[58 FR 32577, June 10, 1993]

§ 669.5 What definitions apply?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) ''Language Resource Center'' means a coordinated concentration of educational research and training resources for improving the nation's capacity to teach and learn foreign languages.

(Authority: 20 U.S.C. 1123)

Subpart B [Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 669.20 How does the Secretary evaluate an application?

The Secretary evaluates an application for an award on the basis of the criteria contained in §§ 669.21 and 669.22. The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1123)

[70 FR 13377, Mar. 21, 2005]

§ 669.21 What selection criteria does the Secretary use?

The Secretary evaluates an application on the basis of the criteria in this section.

(a) *Plan of operation.* (See 34 CFR 655.31(a))

(b) *Quality of key personnel.* (See 34 CFR 655.31(b))

(c) *Budget and cost-effectiveness.* (See 34 CFR 655.31(c))

(d) *Evaluation plan.* (See 34 CFR 655.31 (d))

(e) *Adequacy of resources.* (See 34 CFR 655.31(e))

(f) *Need and potential impact*. The Secretary reviews each application to determine—

(1) The extent to which the proposed materials or activities are needed in the foreign languages on which the project focuses;

(2) The extent to which the proposed materials may be used throughout the United States; and

(3) The extent to which the proposed work or activity may contribute significantly to strengthening, expanding, or improving programs of foreign language study in the United States.

(g) *Likelihood of achieving results*. The Secretary reviews each application to determine—

(1) The quality of the outlined methods and procedures for preparing the materials; and

(2) The extent to which plans for carrying out activities are practicable and can be expected to produce the anticipated results.

(h) *Description of final form of results*. The Secretary reviews each application to determine the degree of specificity and the appropriateness of the description of the expected results from the project.

(i) *Priorities*. If, under the provisions of § 669.22, the application notice specifies priorities for this program, the Secretary determines the degrees to which the priorities are served.

(Approved by the Office of Management and Budget under control number 1840–0608)

(Authority: 20 U.S.C. 1123)

[55 FR 2773, Jan. 26, 1990, as amended at 58 FR 32577, June 10, 1993; 70 FR 13377, Mar. 21, 2005]

§ 669.22 What priorities may the Secretary establish?

(a) The Secretary may each year select funding priorities from among the following:

(1) Categories of allowable activities described in § 669.3.

(2) Specific foreign languages for study or materials development.

(3) Levels of education, for example, elementary, secondary, postsecondary, or teacher education.

(b) The Secretary announces any priorities in the application notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1123)

Subpart D—What Conditions Must Be Met by a Grantee?

§ 669.30 What are allowable equipment costs?

Equipment costs may not exceed fifteen percent of the grant amount.

(Authority: 20 U.S.C. 1123)

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Subpart A—Purpose and Scope

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673.1 Purpose.
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Subpart B—General Provisions for the Federal Perkins Loan, FWS, and FSEOG Programs

673.3 Application.
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673.6 Coordination with BIA grants.
673.7 Administrative cost allowance.

AUTHORITY: 20 U.S.C. 421–429, 1070b–1070b–3, 1070g, 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

SOURCE: 61 FR 60393, Nov. 27, 1996, unless otherwise noted.

Subpart A—Purpose and Scope

§ 673.1 Purpose.

This part governs the following three programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA) that participating institutions administer:

(a) The Federal Perkins Loan Program, which encourages the making of loans by institutions to needy undergraduate and graduate students to help pay for their cost of education.

(b) The Federal Work-Study (FWS) Program, which encourages the part-

time employment of undergraduate and graduate students who need the income to help pay for their cost of education and which encourages FWS recipients to participate in community service activities.

(c) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program, which encourages the providing of grants to exceptionally needy undergraduate students to help pay for their cost of education.

(Authority: 20 U.S.C. 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b)

§ 673.2 Applicability of regulations.

The participating institution is responsible for administering these programs in accordance with the regulations in this part and the applicable program regulations in 34 CFR parts 674, 675, and 676.

(Authority: 20 U.S.C. 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b)

Subpart B—General Provisions for the Federal Perkins Loan, FWS, and FSEOG Programs

§ 673.3 Application.

(a) To participate in the Federal Perkins Loan, FWS, or FSEOG programs, an institution shall file an application before the deadline date established annually by the Secretary through publication of a notice in the FEDERAL REGISTER.

(b) The application for the Federal Perkins Loan, FWS, and FSEOG programs must be on a form approved by the Secretary and must contain the information needed by the Secretary to determine the institution's allocation or reallocation of funds under sections 462, 442, and 413D of the HEA, respectively.

(Authority: 20 U.S.C. 1070b–3 and 1087bb; 42 U.S.C. 2752)

§ 673.4 Allocation and reallocation.

(a) *Allocation and reallocation of Federal Perkins Loan funds.* (1) The Secretary allocates Federal capital contributions to institutions participating in the Federal Perkins Loan Program in accordance with section 462 of the HEA.

(2) The Secretary reallocates Federal capital contributions to institutions participating in the Federal Perkins Loan Program by—

(i) Reallocating 80 percent of the total funds available in accordance with section 462(j) of the HEA; and

(ii) Reallocating 20 percent of the total funds available in a manner that best carries out the purposes of the Federal Perkins Loan Program.

(b) *Allocation and reallocation of FWS funds.* The Secretary allocates and reallocates funds to institutions participating in the FWS Program in accordance with section 442 of the HEA.

(c) *Allocation and reallocation of FSEOG funds.* (1) The Secretary allocates funds to institutions participating in the FSEOG program in accordance with section 413D of the HEA.

(2) The Secretary reallocates funds to institutions participating in the FSEOG Program in a manner that best carries out the purposes of the FSEOG Program.

(d) *General allocation and reallocation*—(1) *Categories.* As used in section 462 (Federal Perkins Loan Program), section 442 (FWS Program), and section 413D (FSEOG Program) of the HEA, ''Eligible institutions offering comparable programs of instruction'' means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(i) Cosmetology.

(ii) Business.

(iii) Trade/Technical.

(iv) Art Schools.

(v) Other Proprietary Institutions.

(vi) Non-Proprietary Institutions.

(2) *Payments to institutions.* The Secretary allocates funds for a specific period of time. The Secretary provides an institution its allocation in accordance with the payment methods described in 34 CFR 668.162.

(3) *Unexpended funds.* (i) If an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the Secretary reduces the institution's allocation for that program for the second succeeding award year by the dollar amount returned.

(ii) The Secretary may waive the provision of paragraph (d)(3)(i) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(iii) The Secretary considers enforcement of paragraph (d)(3)(i) of this section to be contrary to the interest of the program only if the institution returns more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

(e) *Anticipated collections of Federal Perkins Loan funds.* (1) For the purposes of calculating an institution's share of any excess allocation of Federal Perkins Loan funds, an institution's anticipated collections are equal to the amount that was collected by the institution during the second year preceding the beginning of the award period multiplied by 1.21.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for any institution that has a cohort default rate that does not exceed 7.5 percent.

(f) *Authority to expend FWS funds.* Except as specifically provided in 34 CFR 675.18 (b), (c), and (f), an institution may not use funds allocated or reallocated for an award year—

(1) To meet FWS wage obligations incurred with regard to an award of FWS employment made for any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(g) *Authority to expend FSEOG funds.* Except as specifically provided in 34 CFR 668.164(g), an institution shall not use funds allocated or reallocated for an award year—

(1) To make FSEOG disbursements to students in any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 20 U.S.C. 1070b-3 and 1087bb, 42 U.S.C. 2752)

§ 673.5 Overaward.

(a) *Overaward prohibited*—(1) *Federal Perkins Loan and FSEOG Programs.* An institution may only award or disburse a Federal Perkins loan or an FSEOG to a student if that loan or the FSEOG, combined with the other estimated financial assistance the student receives, does not exceed the student's financial need.

(2) *FWS Program.* An institution may only award FWS employment to a student if the award, combined with the other estimated financial assistance the student receives, does not exceed the student's financial need.

(b) *Awarding and disbursement.* (1) When awarding and disbursing a Federal Perkins loan or an FSEOG or awarding FWS employment to a student, the institution shall take into account those amounts of estimated financial assistance it—

(i) Can reasonably anticipate at the time it awards Federal Perkins Loan funds, an FSEOG, or FWS funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(2) If a student receives amounts of estimated financial assistance at any time during the award period that were not considered in calculating the Federal Perkins Loan amount or the FWS or FSEOG award, and the total amount of estimated financial assistance including the loan, the FSEOG, or the prospective FWS wages exceeds the student's need, the overaward is the amount that exceeds need.

(c) *Estimated financial assistance.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, the Secretary considers that ''estimated financial assistance'' includes, but is not limited to, any—

(i) Funds a student is entitled to receive from a Federal Pell Grant;

(ii) William D. Ford Federal Direct Loans;

(iii) Federal Family Education Loans;

(iv) Long-term need-based loans, including Federal Perkins loans;

(v) Grants, including FSEOGs, State grants, Academic Competitiveness Grants, and National SMART Grants;

(vi) Scholarships, including athletic scholarships;

(vii) Waivers of tuition and fees;

(viii) Fellowships or assistantships, except non-need-based employment portions of such awards;

(ix) Except as provided in paragraph (c)(2)(v) of this section, veterans' education benefits;

(x) National service education awards or post-service benefits paid for the cost of attendance under title I of the National and Community Service Act of 1990 (AmeriCorps);

(xi) Net earnings from need-based employment;

(xii) Insurance programs for the student's education; and

(xiii) Any educational benefits paid because of enrollment in a postsecondary education institution, or to cover postsecondary education expenses.

(2) The Secretary does not consider as estimated financial assistance—

(i) Any portion of the estimated financial assistance described in paragraph (c)(1) of this section that is included in the calculation of the student's expected family contribution (EFC);

(ii) Earnings from non-need-based employment;

(iii) Those amounts used to replace EFC, including the amounts of any TEACH Grants, unsubsidized Federal Stafford or Direct Loans, Federal PLUS or Federal Direct PLUS Loans, and non-federal non-need-based loans, including private, state-sponsored, and institutional loans. However, if the sum of the amounts received that are being used to replace the student's EFC actually exceed the EFC, the excess amount must be treated as estimated financial assistance;

(iv) Assistance not received under a title IV, HEA program, if that assistance is designated to offset all or a portion of a specific component of the cost of attendance and that amount is excluded from the cost of attendance as well. If that assistance is excluded from either estimated financial assistance or cost of attendance, that amount must be excluded from both;

(v) Federal veterans' education benefits paid under—

(A) Chapter 103 of title 10, United States Code (Senior Reserve Officers' Training Corps);

(B) Chapter 106A of title 10, United States Code (Educational Assistance for Persons Enlisting for Active Duty);

(C) Chapter 1606 of title 10, United States Code (Selected Reserve Educational Assistance Program);

(D) Chapter 1607 of title 10, United States Code (Educational Assistance Program for Reserve Component Members Supporting Contingency Operations and Certain Other Operations);

(E) Chapter 30 of title 38, United States Code (All-Volunteer Force Educational Assistance Program, also known as the ''Montgomery GI Bill—active duty'');

(F) Chapter 31 of title 38, United States Code (Training and Rehabilitation for Veterans with Service-Connected Disabilities);

(G) Chapter 32 of title 38, United States Code (Post-Vietnam Era Veterans' Educational Assistance Program);

(H) Chapter 33 of title 38, United States Code (Post 9/11 Educational Assistance);

(I) Chapter 35 of title 38, United States Code (Survivors' and Dependents' Educational Assistance Program);

(J) Section 903 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note) (Educational Assistance Pilot Program);

(K) Section 156(b) of the ''Joint Resolution making further continuing appropriations and providing for productive employment for the fiscal year 1983, and for other purposes'' (42 U.S.C. 402 note) (Restored Entitlement Program for Survivors, also known as ''Quayle benefits'');

(L) The provisions of chapter 3 of title 37, United States Code, related to subsistence allowances for members of the Reserve Officers Training Corps; and

(M) Any program that the Secretary may determine is covered by section 480(c)(2) of the HEA; and

(vi) Iraq and Afghanistan Service Grants made under section 420R of the HEA.

(3) The institution may also exclude as estimated financial assistance any portion of a subsidized Federal Stafford or Direct Loan that is equal to or less than the amount of a student's national service education awards or post service benefits paid for the cost of attendance under title I of the National

and Community Service Act of 1990 (AmeriCorps).

(d) *Treatment of estimated financial assistance in excess of need—General.* An institution shall take the following steps if it learns that a student has received additional amounts of estimated financial assistance not included in the calculation of Federal Perkins Loan, FWS, or FSEOG eligibility that would result in the student's total amount of estimated financial assistance exceeding his or her financial need by more than $300:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total amount of estimated financial assistance does not exceed this increased need by more than $300, no further action is necessary.

(2) If the student's total amount of estimated financial assistance still exceeds his or her need by more than $300, as recalculated pursuant to paragraph (d)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) *Federal Perkins loan and FSEOG overpayment.* If the student's total amount of estimated financial assistance still exceeds his or her need by more than $300, after the institution takes the steps required in paragraphs (d)(1) and (2) of this section, the institution shall consider the amount by which the estimated financial assistance amount exceeds the student's financial need by more than $300 as an overpayment.

(e) *Termination of FWS employment.* (1) An institution may fund a student's FWS employment with FWS funds only until the amount of the FWS award has been earned or until the student's financial need, as recalculated under paragraph (d)(1) of this section, is met.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, an institution may provide additional FWS funding to a student whose need has been met until that student's cumulative earnings from all need-based employment occurring subsequent to the time his or her financial need has been met exceed $300.

(f) *Liability for and recovery of Federal Perkins loans and FSEOG overpayments.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, a student is liable for any Federal Perkins loan or FSEOG overpayment made to him or her. An FSEOG overpayment for purposes of this paragraph does not include the non-Federal share of an FSEOG award if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.

(2) The institution is liable for a Federal Perkins loan or FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part or 34 CFR parts 668, 674, or 676. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund for a Federal Perkins loan overpayment or to its FSEOG account for an FSEOG overpayment.

(3) A student is not liable for, and the institution is not required to attempt recovery of, a Federal Perkins loan or FSEOG overpayment, nor is the institution required to refer an FSEOG overpayment to the Secretary, if the overpayment—

(i) Is less than $25; and

(ii) Is neither a remaining balance nor a result of the application of the overaward threshold in paragraph (d) of this section.

(4)(i) Except as provided in paragraph (f)(3) of this section, if an institution makes a Federal Perkins loan or FSEOG overpayment for which it is not liable, it shall promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to pay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the overpayment.

(ii) If a student objects to the institution's Federal Perkins loan or FSEOG overpayment determination on the grounds that it is erroneous, the institution shall consider any information

provided by the student and determine whether the objection is warranted.

(5) Except as provided in paragraph (f)(3) of this section, if a student fails to repay an FSEOG overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the FSEOG overpayment after the institution has taken the action required by paragraph (f)(4) of this section, the institution must refer the FSEOG overpayment to the Secretary for collection purposes in accordance with procedures required by the Secretary. After referring the FSEOG overpayment to the Secretary under this section, the institution need make no further effort to recover the overpayment.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1070b–1, 1070g, 1087dd, 1087hh; 42 U.S.C. 2753)

[61 FR 60393, Nov. 17, 1996, as amended at 64 FR 58292, Oct. 28, 1999; 67 FR 67075, Nov. 1, 2002; 71 FR 45696, Aug. 9, 2006; 71 FR 64397, Nov. 1, 2006; 73 FR 35494, June 23, 2008; 74 FR 55986, Oct. 29, 2009]

§ 673.6 Coordination with BIA grants.

(a) *Coordination of BIA grants with Federal Perkins loans, FWS awards, or FSEOGs.* To determine the amount of a Federal Perkins loan, FWS compensation, or an FSEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From estimated financial assistance other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements the student aid package specified in paragraph (a) of this section.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted from the other assistance (except for Federal Pell Grants), not from the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Federal Pell Grants. However, the institution may change the sequence if requested to do so by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a student who is also eligible for a BIA education grant, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1070b–1 and 1087dd; 42 U.S.C. 2753)

[61 FR 60393, Nov. 27, 1996, as amended at 71 FR 45697, Aug. 9, 2006]

§ 673.7 Administrative cost allowance.

(a) An institution participating in the Federal Perkins Loan, FWS, or FSEOG programs is entitled to an administrative cost allowance for an award year if it advances funds under the Federal Perkins Loan Program, provides FWS employment, or awards grants under the FSEOG Program to students in that year.

(b) An institution may charge the administrative cost allowance calculated in accordance with paragraph (c) of this section for an award year against-

(1) The Federal Perkins Loan Fund, if the institution advances funds under the Federal Perkins Loan Program to students in that award year;

(2) The FWS allocation, if the institution provides FWS employment to students in that award year; and

(3) The FSEOG allocation, if the institution awards grants to students under the FSEOG program in that award year.

(c) For any award year, the amount of the administrative costs allowance equals—

(1) Five percent of the first $2,750,000 of the institution's total expenditures to students in that award year under

the FWS, FSEOG, and the Federal Perkins Loan programs; plus

(2) Four percent of its expenditures to students that are greater than $2,750,000 but less than $5,500,000; plus

(3) Three percent of its expenditures to students that are $5,500,000 or more.

(d) The institution shall not include, when calculating the allowance in paragraph (c) of this section, the amount of loans made under the Federal Perkins Loan Program that it assigns during the award year to the Secretary under section 463(a)(6) of the HEA.

(e) An institution shall use its administrative costs allowance to offset its cost of administering the Federal Pell Grant, FWS, FSEOG, and Federal Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of subpart D of the Student Assistance General Provisions regulations, 34 CFR part 668.

(f) An institution may use up to 10 percent of the administrative costs allowance, as calculated under paragraph (c) of this section, that is attributable to the institution's expenditures under the FWS program to pay the administrative costs of conducting its program of community service. These costs may include the costs of—

(1) Developing mechanisms to assure the academic quality of a student's experience;

(2) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(3) Collaborating with public and private nonprofit agencies and programs assisted under the National and Community Service Act of 1990 in the planning, development, and administration of these programs.

(g) If an institution charges any administrative cost allowance against its Federal Perkins Loan Fund, it must charge these costs during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1070b–2, 1087cc, and 1096, 42 U.S.C. 2753)

PART 674—FEDERAL PERKINS LOAN PROGRAM

NOTE: An asterisk (*) indicates provisions that are common to parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

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674.61 Discharge for death or disability.
674.62 No cancellation for prior service—no repayment refunded.
674.63 Reimbursement to institutions for loan cancellation.
674.64 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

APPENDIXES A–D TO PART 674 [RESERVED]
APPENDIX E TO PART 674—EXAMPLES FOR COMPUTING MAXIMUM PENALTY CHARGES (6 MONTHS UNPAID OVERDUE PAYMENTS) ON DIRECT LOANS MADE FOR PERIODS OF ENROLLMENT BEFORE JANUARY 1, 1986

AUTHORITY: 20 U.S.C. 1070g, 1087aa–1087hh; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 674 appear at 65 FR 18002, 18003, Apr. 6, 2000.

Subpart A—General Provisions

SOURCE: 52 FR 45747, Dec. 1, 1987, unless otherwise noted.

§ 674.1 Purpose and identification of common provisions.

(a) The Federal Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

(b)(1) The Federal Perkins Loan Program, authorized by title IV-E of the Higher Education Act of 1965, as amended, and previously named the National Direct Student Loan (NDSL) Program, is a continuation of the National Defense Loan Program authorized by title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under title II before the enactment of title IV-E continue to exist.

(2) The Secretary considers any student loan fund established under title IV-E to include the assets of an institution's student loan fund established under title II.

*(c) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to ''loans'' or ''student loans'' apply to all loans made under title IV-E of the HEA or title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92–318, sec. 137(d)(1))

[52 FR 45747, Dec. 1, 1987, as amended at 57 FR 32344, July 21, 1992; 59 FR 61415, Nov. 29, 1994; 64 FR 18002, Apr. 6, 2000]

§ 674.2 Definitions.

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

Academic Competitiveness Grant (ACG) Program
Academic year
Award year
Defense loan
Enrolled
Expected family contribution (EFC)
Federal Family Education Loan (FFEL) programs
Federal Pell Grant
Federal Perkins loan
Federal Perkins Loan Program
Federal PLUS Program
Federal SLS Program
Federal Supplemental Educational Opportunity Grant (FSEOG) Program
Federal Work-Study (FWS) Program
Full-time student
Graduate or professional student
Half-time student
HEA
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program
National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program
Payment period
Secretary

Teacher Education Assistance for College and Higher Education (TEACH) Grant Program
TEACH Grant
Undergraduate student

(b) The Secretary defines other terms used in this part as follows:

Default: The failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.

Enter repayment: The day following the expiration of the initial grace period or the day the borrower waives the initial grace period. This date does not change if a forbearance, deferment, or cancellation is granted after the borrower enters repayment.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

Fund (Federal Perkins Loan Fund): A fund established and maintained according to § 674.8.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Federal Perkins loans, Defense loans, and NDSLs made before October 1, 1980, and six months for other Direct loans.

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Making of a loan: When the institution makes the first disbursement of a loan to a student for an award year.

Master Promissory Note (MPN): A promissory note under which the borrower may receive loans for a single award year or multiple award years.

National credit bureau: Any one of the national credit bureaus with which the Secretary has an agreement.

**Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Post-deferment grace period: That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Satisfactory repayment arrangement: (1) For purposes of regaining eligibility for grant, loan, or work assistance under title IV of the HEA, to the extent that the borrower is otherwise eligible, the making of six on-time, consecutive, voluntary, full monthly payments on a defaulted loan. ''On-time'' means a payment made within 20 days of the scheduled due date. A borrower may obtain the benefit of this paragraph with respect to renewed eligibility once.

(2) Voluntary payments are payments made directly by the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution.

(3) A borrower has not used the one opportunity to renew eligibility for title IV assistance if the borrower makes six consecutive, on-time, voluntary, full monthly payments under an agreement to rehabilitate a defaulted loan, but does not receive additional title IV assistance prior to defaulting on that loan again.

Student loan: For this part means an NDSL Loan, Defense Loan, or a Federal Perkins Loan.

Total monthly gross income: The gross amount of income received by the borrower from employment (either full-

time or part-time) and from other sources.

(Authority: 20 U.S.C. 1070g, 1094)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 52580, Dec. 28, 1988; 57 FR 32344, July 21, 1992; 59 FR 61404, 61415, Nov. 30, 1994; 60 FR 61814, Dec. 1, 1995; 61 FR 60608, Nov. 29, 1996; 64 FR 58308, Oct. 28, 1999; 65 FR 18002, Apr. 6, 2000; 67 FR 67076, Nov. 1, 2002; 69 FR 12276, Mar. 16, 2004; 71 FR 38003, July 3, 2006; 72 FR 62030, Nov. 1, 2007; 73 FR 35494, June 23, 2008; 78 FR 65804, Nov. 1, 2013]

§§ 674.3–674.4 [Reserved]

§ 674.5 Federal Perkins Loan program cohort default rate and penalties.

(a) *Default penalty*. If an institution's cohort default rate meets the following levels, a default penalty is imposed on the institution as follows:

(1) *FCC reduction*. If the institution's cohort default rate equals or exceeds 25 percent, the institution's FCC is reduced to zero.

(2) *Ineligibility*. For award year 2000–2001 and succeeding award years, an institution with a cohort default rate that equals or exceeds 50 percent for each of the three most recent years for which cohort default rate data are available is ineligible to participate in the Federal Perkins Loan Program. Following a review of that data and upon notification by the Secretary, an institution is ineligible to participate for the award year, or the remainder of the award year, in which the determination is made and the two succeeding award years. An institution may appeal a notification of ineligibility from the Secretary within 30 days of its receipt.

(i) *Appeal procedures*—(A) *Inaccurate calculation*. An institution may appeal a notice of ineligibility based upon the submission of erroneous data by the institution, the correction of which would result in a recalculation that reduces the institution's cohort default rate to below 50 percent for any of the three award years used to make a determination of ineligibility. The Secretary considers the edit process, by which an institution adjusts the cohort default rate data that it submits to the Secretary on its Fiscal Operations Report, to constitute the procedure to appeal a determination of ineligibility based on a claim of erroneous data.

(B) *Small number of borrowers entering repayment*. An institution may appeal a notice of ineligibility if, on average, 10 or fewer borrowers enter repayment for the three most recent award years used by the Secretary to make a determination of ineligibility.

(C) *Decision of the Secretary*. The Secretary issues a decision on an appeal within 45 days of the institution's submission of a complete, accurate, and timely appeal. An institution may continue to participate in the program until the Secretary issues a decision on the institution's appeal.

(ii) *Liquidation of an institution's Perkins Loan portfolio*. Within 90 days of receiving a notification of ineligibility or, if the institution appeals, within 90 days of the Secretary's decision to deny the appeal, the institution must—

(A) Liquidate its revolving student loan fund by making a capital distribution of the liquid assets of the Fund according to section 466(c) of the HEA; and

(B) Assign any outstanding loans in the institution's portfolio to the Secretary in accordance with § 674.50.

(iii) *Effective date*. The provisions of paragraph (a)(2) of this section are effective with the cohort default rate calculated as of June 30, 2001.

(b) *Cohort default rate*. (1) The term ''cohort default rate'' means, for any award year in which 30 or more current and former students at the institution enter repayment on a loan received for attendance at the institution, the percentage of those current and former students who enter repayment in that award year on the loans received for attendance at that institution who default before the end of the following award year.

(2) For any award year in which less than 30 current and former students at the institution enter repayment on a loan received for attendance at the institution, the ''cohort default rate'' means the percentage of those current and former students who entered repayment on loans received for attendance at that institution in any of the three most recent award years and who defaulted on those loans before the end of the award year immediately following the year in which they entered repayment.

(c) *Defaulted loans to be included in the cohort default rate.* For purposes of calculating the cohort default rate under paragraph (b) of this section—

(1) A borrower must be included only if the borrower's default has persisted for at least—

(i) 240 consecutive days for loans repayable in monthly installments; or

(ii) 270 consecutive days for loans repayable in quarterly installments;

(2) A loan is considered to be in default if a payment is made by the institution of higher education, its owner, agency, contractor, employee, or any other entity or individual affiliated with the institution, in order to avoid default by the borrower;

(3)(i) In determining the number of borrowers who default before the end of the following award year, a loan is excluded if the borrower has—

(A) Voluntarily made six consecutive monthly payments;

(B) Voluntarily made all payments currently due;

(C) Repaid the full amount due, including any interest, late fees, and collection costs that have accrued on the loan;

(D) Received a deferment or forbearance based on a condition that predates the borrower reaching a 240- or 270-day past due status; or

(E) Rehabilitated the loan after becoming 240- or 270-days past due.

(ii) A loan is considered canceled and also excluded from an institution's cohort default rate calculation if the loan is—

(A) Discharged due to death or permanent and total disability;

(B) Discharged in bankruptcy;

(C) Discharged due to a closed school;

(D) Repaid in full in accordance with § 674.33(e) or § 674(h); or

(E) Assigned to and conditionally discharged by the Secretary in accordance with § 674.61(b).

(iii) For the purpose of this section, funds obtained by income tax offset, garnishment, income or asset execution, or pursuant to a judgment are not considered voluntary.

(4) In the case of a student who has attended and borrowed at more than one institution, the student and his or her subsequent repayment or default are attributed to the institution for attendance at which the student received the loan that entered repayment in the award year.

(d) *Locations of the institution.* (1) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the award year for which the rate is calculated.

(2) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(3) For an institution that changes status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of July 1 of the award year for which a cohort default rate is being calculated.

(4)(i) For an institution that changes status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both the former free-standing institution and the other institution. This cohort default rate applies to the new consolidated institution and all of its current locations.

(ii) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(iii) For an institution that changes status from a location of one institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the number of students who default during the applicable award years from both of the institutions in

their entirety, not limited solely to the respective locations.

(5) For an institution that has a change in ownership that results in a change in control, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from the institution under both the old and new control.

(Authority: 20 U.S.C. 1087bb)

[59 FR 61405, Nov. 30, 1994, as amended at 60 FR 61814, Dec. 1, 1995; 64 FR 58308, Oct. 28, 1999; 65 FR 65690, Nov. 1, 2000; 68 FR 75428, Dec. 31, 2003]

§§ 674.6–674.7 [Reserved]

§ 674.8 Program participation agreement.

To participate in the Federal Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR part 668. The agreement further specifically provides, among other things, that—

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund—

(1) FCC received under this subpart;

(2) Except as provided in paragraph (a)(1) of § 674.7—

(i) ICC equal to at least three-seventeenths of the FCC described in paragraph (a)(1) of this section in award year 1993–94; and

(ii) ICC equal to at least one-third of the FCC described in paragraph (a)(1) of this section in award year 1994–95 and succeeding award years;

(3) ICC equal to the amount of FCC described in paragraph (a)(1) of § 674.7 for an institution that has been granted permission by the Secretary to participate in the ELO under the Federal Perkins Loan program;

(4) Payments of principal, interest, late charges, penalty charges, and collection costs on loans from the Fund;

(5) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(6) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(7) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for—

(1) Making loans to students;

(2) Administrative expenses as provided for in 34 CFR 673.7;

(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs (see § 674.47);

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and late charges on a loan made from the Fund (see § 674.47); and

(6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.

(c) The institution shall submit an annual report to the Secretary containing information that determines its cohort default rate that includes—

(1) For institutions in which 30 or more of its current or former students first entered repayment in an award year—

(i) The total number of borrowers who first entered repayment in the award year; and

(ii) The number of those borrowers in default by the end of the following award year; or

(2) For institutions in which less than 30 of its current or former students entered repayment in an award year—

(i) The total number of borrowers who first entered repayment in any of the three most recent award years; and

(ii) The number of those borrowers in default before the end of the award year immediately following the year in which they entered repayment.

(d)(1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan

to the United States without recompense at the beginning of a repayment period.

(2) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(3) The institution shall, at the request of the Secretary, assign its rights to a loan to the United States without recompense if—

(i) The amount of outstanding principal is $100.00 or more;

(ii) The loan has been in default, as defined in § 674.5(c)(1), for seven or more years; and

(iii) A payment has not been received on the loan in the preceding twelve months, unless payments were not due because the loan was in a period of authorized forbearance or deferment.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The institution shall provide the loan information required by section 463A of the HEA to a borrower.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1087cc, 1087cc–1, 1094)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32344, July 21, 1992; 59 FR 61407, 61415, Nov. 30, 1994; 61 FR 60396, Nov. 27, 1996; 64 FR 58315, Oct. 28, 1999; 72 FR 61996, Nov. 1, 2007]

§ 674.9 Student eligibility.

A student at an institution of higher education is eligible to receive a loan under the Federal Perkins Loan program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR part 668;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate, or professional student at the institution, whether or not engaged in a program of study abroad approved for credit by the home institution;

(c) Has financial need as determined in accordance with part F of title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order–

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members;

(d) Has received for that award year, if an undergraduate student—

(1) A SAR as a result of applying for a grant under the Federal Pell Grant Program; or

(2) A preliminary determination of eligibility or ineligibility for a Federal Pell Grant by the institution's financial aid administrator after applying for a SAR with a Federal Pell Grant Processor;

(e) Is willing to repay the loan. Failure to meet payment obligations on a previous loan is evidence that the student is unwilling to repay the loan;

(f) Provides to the institution a driver's license number, if any, at the time of application for the loan;

(g) In the case of a borrower whose prior loan under title IV of the Act or whose TEACH Grant service obligation was discharged after a final determination of total and permanent disability—

(1) Obtains a certification from a physician that the borrower is able to engage in substantial gainful activity;

(2) Signs a statement acknowledging that any new Federal Perkins Loan the borrower receives cannot be discharged in the future on the basis of any present impairment, unless that condition substantially deteriorates; and

(3) If the borrower receives a new Federal Perkins Loan within three years of the date that any previous title IV loan or TEACH Grant service obligation was discharged due to a total and permanent disability in accordance with § 674.61(b)(3)(i), 34 CFR 682.402(c), 34 CFR 685.213, or 34 CFR 686.42(b) based on a discharge request received on or after July 1, 2010, resumes repayment on the previously

discharged loan in accordance with § 674.61(b)(5), 34 CFR 682.402(c)(5), or 34 CFR 685.213(b)(4), or acknowledges that he or she is once again subject to the terms of the TEACH Grant agreement to serve before receiving the new loan.

(h) In the case of a borrower whose previous loan under title IV of the HEA was conditionally discharged after an initial determination that the borrower was totally and permanently disabled based on a discharge request received prior to July 1, 2010, the borrower must—

(1) Comply with the requirements of paragraphs (g)(1) and (g)(2) of this section; and

(2) Sign a statement acknowledging that—

(i) The loan that has been conditionally discharged prior to a final determination of total and permanent disability cannot be discharged in the future on the basis of any impairment present when the borrower applied for a total and permanent disability discharge or when a new loan is made, unless that impairment substantially deteriorates; and

(ii) Collection activity will resume on any loan in a conditional discharge period.

(i) Does not have any loans under title IV of the HEA on which collection activity has been suspended based on a conditional determination that the borrower was totally and permanently disabled. If a borrower applies for a loan under title IV of the HEA during the conditional discharge period, the suspension of collection activity must be ended before the borrower becomes eligible to receive any additional loans.

(j) In the case of a borrower who is in default on a Federal Perkins Loan, NDSL or Defense loan, satisfies one of the conditions contained in § 674.5(c)(3)(i) or (ii) except that—

(1) For purposes of this section, voluntary payments made by the borrower under paragraph (i) of this section are payments made directly by the borrower; and

(2) Voluntary payments do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(k) In the case of a borrower who is in default on an FFEL Program or a Direct Loan Program loan, makes satisfactory repayment arrangements as defined in 34 CFR 682.200(b) or 685.102(b) on the defaulted loan, as determined by the loan holder; and

(l) For purposes of this section, reaffirmation means the acknowledgment of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(1) Signing a new promissory note or new repayment agreement; or

(2) Making a payment on the loan.

(Authority: 20 U.S.C. 1087aa, 1087dd, and 1091)

[52 FR 45747, Dec. 1, 1987, as amended at 59 FR 61407, 61415, Nov. 30, 1994; 60 FR 34167, June 30, 1995; 62 FR 50847, Sept. 26, 1997; 64 FR 58309, Oct. 28, 1999; 65 FR 65690, Nov. 1, 2000; 66 FR 44006, Aug. 21, 2001; 67 FR 67076, Nov. 1, 2002; 71 FR 45697, Aug. 9, 2006; 74 FR 55986, Oct. 29, 2009; 78 FR 65805, Nov. 1, 2013]

§ 674.10 Selection of students for loans.

(a)(1) An institution shall make loans under this part reasonably available, to the extent of available funds, to all students eligible under § 674.9 but shall give priority to those students with exceptional financial need.

(2) The institution shall define exceptional financial need for the purpose of the priority described in paragraph (a)(1) of this section and shall develop procedures for implementing that priority.

(b) If an institution's allocation of Federal Capital Contribution is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the dollar amount of loans made under this part must be offered to those students.

(c) The institution shall establish selection procedures and these procedures must be—

(1) In writing;

(2) Uniformly applied; and

(3) Maintained in the institution's files.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1087cc and 1087dd)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61407, Nov. 30, 1994; 64 FR 58292, 58315, Oct. 28, 1999]

§ 674.11 [Reserved]

§ 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and NDSLs an eligible student may borrow is—

(1) $5,500 for a student who is enrolled in a program of undergraduate education; and

(2) $8,000 for a graduate or professional student.

(b) The aggregate unpaid principal amount of all Federal Perkins Loans and NDSLs received by an eligible student may not exceed—

(1) $27,500 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree;

(2) $60,000 for a graduate or professional student; and

(3) $11,000 for any other student.

(c) The maximum annual amounts described in paragraph (a) of this section and the aggregate maximum amounts described in paragraph (b) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section, and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution.

(Authority: 20 U.S.C. 1087dd)

[59 FR 61407, Nov. 30, 1994, as amended at 64 FR 58309, Oct. 28, 1999; 74 FR 55660, Oct. 28, 2009]

§ 674.13 Reimbursement to the Fund.

(a) The Secretary may require an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of—

(1) A loan disbursed by the institution to a borrower in excess of the amount that the borrower was eligible to receive, as determined on the basis of information the institution had, or should have had, at the time of disbursement; or

(2) Except as provided in paragraph (b) of this section, a defaulted loan with regard to which the institution failed—

(i) To record or retain the loan note in accordance with the requirements of this part;

(ii) To record advances on the loan note in accordance with the requirements of this part; or

(iii) To exercise due diligence in collecting in accordance with the requirements of this part.

(b) The Secretary does not require an institution to reimburse its Fund for the portion of the outstanding balance of a defaulted loan described in paragraph (a)(2) of this section—

(1) That the institution—

(i) Recovers from the borrower or endorser; or

(ii) Demonstrates, to the Secretary's satisfaction, would not have been collected from the borrower even if the institution complied in a timely manner with the due diligence requirements of subpart C of this part; or

(2) On which the institution obtains a judgment.

(c) An institution that is required to reimburse its Fund under paragraph (a) of this section shall also reimburse the Fund for the amount of the administrative cost allowance claimed by the institution for that portion of the loans to be reimbursed.

(d) An institution that reimburses its Fund under paragraph (a) of this section thereby acquires for its own account all the right, title and interest of the Fund in the loan for which reimbursement has been made.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1087dd–1087hh)

[52 FR 45747, Dec. 1, 1987, as amended at 59 FR 61407, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999; 65 FR 65614, Nov. 1, 2000]

§§ 674.14–674.15 [Reserved]

§ 674.16 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the

student with the following information:

(i) The name of the institution and the address to which communications and payments should be sent.

(ii) The principal amount of the loan and a statement that the institution will report the amount of the loan to a national credit bureau at least annually.

(iii) The stated interest rate on the loan.

(iv) The yearly and cumulative maximum amounts that may be borrowed.

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan.

(vi) The minimum and maximum repayment terms which the institution may impose and the minimum monthly repayment required.

(vii) A statement of the total cumulative balance owed by the student to that institution, and an estimate of the monthly payment amount needed to repay that balance.

(viii) Special options the borrowers may have for loan consolidation or other refinancing of the loan.

(ix) The borrower's right to prepay all or part of the loan, at any time, without penalty, and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or canceled including a brief notice of the Department of Defense program for repayment of loans on the basis of specified military service.

(x) A definition of default and the consequences to the borrower, including a statement that the institution may report the default to a national credit bureau.

(xi) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(xii) The amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of such charges from the proceeds of the loan or paid separately by the borrower.

(xiii) Any cost that may be assessed on the borrower in the collection of the loan including late charges and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing—

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (f) of this section, an institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution shall determine the amount advanced each payment period by the following fraction:

$$\frac{\text{Loan amount}}{N}$$

Where Loan Amount = the total loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or estimated financial assistance amounts during an academic year and needs additional funds in a particular payment period, the institution may disburse loan funds to the student for those uneven costs.

(d)(1) The institution shall disburse funds to a student or the student's account in accordance with 34 CFR 668.164.

(2) The institution shall ensure that each loan is supported by a legally enforceable promissory note as proof of the borrower's indebtedness.

(3) If the institution uses a Master Promissory Note (MPN), the institution's ability to make additional loans based on that MPN will automatically expire upon the earliest of—

(i) The date the institution receives written notification from the borrower requesting that the MPN no longer be used as the basis for additional loans;

(ii) Twelve months after the date the borrower signed the MPN if no disbursements are made by the institution under that MPN; or

(iii) Ten years from the date the borrower signed the MPN or the date the institution receives the MPN, except

that a remaining portion of a loan may be disbursed after this date.

(e) The institution shall advance funds to a student in accordance with the provisions of § 668.164.

(f)(1) The institution shall return to the Fund any amount advanced to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) An institutional official may not, without prior approval from the Secretary, obtain a student's power of attorney to endorse any check used to disburse loan funds.

(h)(1) An institution must report to at least one national credit bureau—

(i) The amount and the date of each disbursement;

(ii) Information concerning the repayment and collection of the loan until the loan is paid in full; and

(iii) The date the loan was repaid, canceled, or discharged for any reason.

(2) An institution must promptly report any changes to information previously reported on a loan to the same credit bureaus to which the information was previously reported.

(i) [Reserved]

(j) The institution must report enrollment and loan status information, or any Title IV loan-related information required by the Secretary, to the Secretary by the deadline date established by the Secretary.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1987cc, 1087cc–1, 1087dd, 1091 and 1094)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61408, Nov. 30, 1994; 59 FR 61722, Dec. 1, 1994; 60 FR 34433, June 30, 1995; 60 FR 61814, Dec. 1, 1995; 61 FR 60608, Nov. 29, 1996; 64 FR 58309, Oct. 28, 1999; 67 FR 67076, Nov. 1, 2002; 71 FR 45697, Aug. 9, 2006; 72 FR 61996, 62030, Nov. 1, 2007]

§ 674.17 Federal interest in allocated funds—transfer of Fund.

(a) If an institution responsible for a Federal Perkins Loan fund closes or no longer wants to participate in the program, the Secretary directs the institution to take the following steps to protect the outstanding loans and the Federal interest in that Fund:

(1) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

(2) The assignment of the outstanding loans to the United States.

(b) An institution that assigns outstanding loans under this paragraph relinquishes its interest in those loans.

(Authority: 20 U.S.C. 1087cc, 1087ff), and (1087hh)

[52 FR 45747, Dec. 1, 1987, as amended at 59 FR 61415, Nov. 30, 1994; 60 FR 61814, Dec. 1, 1995; 67 FR 67076, Nov. 1, 2002]

§ 674.18 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the Federal Perkins Loan program into its Fund. It may use these funds only for making loans and the other activities specified in § 674.8(b).

(b) *Transfer of funds.* (1) An institution may transfer up to 25 percent of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Federal Work-Study program or Federal Supplemental Educational Opportunity Grant program, or to both.

(2) An institution may transfer up to the total of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Work-Colleges program.

(3) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(4) An institution shall report any transferred funds on the Fiscal Operations Report required under § 674.19(d).

(5) An institution shall transfer back to the Federal Perkins Loan program any funds unexpended at the end of the award year that it transferred to the FWS program, the FSEOG program, or the Work-Colleges program from the Federal Perkins Loan program.

(Authority: 20 U.S.C. 1087cc, 1087dd, and 1096)

[52 FR 45747, Dec. 1, 1987, as amended at 57 FR 32345, July 21, 1992; 59 FR 61408, 61415, Nov. 30, 1994; 61 FR 60396, Nov. 27, 1996]

§ 674.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its Federal Perkins Loan program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2)(i) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section.

(ii) An institution shall notify any bank in which it deposits Federal funds of the accounts into which those funds are deposited by—

(A) Ensuring that the name of the account clearly discloses the fact that Federal funds are deposited in the account; or

(B) Notifying the bank, in writing, of the names of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Federal Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) *Account for Perkins Loan Fund.* An institution shall maintain the funds it receives under this part in accordance with the requirements in § 668.163.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

(d) *Records and reporting.* (1) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(2) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(e) *Retention of records*—(1) *Records.* An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) *Loan records.* (i) An institution shall retain a record of disbursements for each loan made to a borrower on a Master Promissory Note (MPN). This record must show the date and amount of each disbursement.

(ii) For any loan signed electronically, an institution must maintain an affidavit or certification regarding the creation and maintenance of the institution's electronic MPN or promissory note, including the institution's authentication and signature process in accordance with the requirements of § 674.50(c)(12).

(iii) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, collection costs, and either penalty or late charges.

(3) *Period of retention of disbursement records, electronic authentication and signature records, and repayment records.*

(i) An institution shall retain disbursement and electronic authentication and signature records for each loan made using an MPN for at least three years from the date the loan is canceled, repaid, or otherwise satisfied.

(ii) An institution shall retain repayment records, including cancellation and deferment requests for at least three years from the date on which a loan is assigned to the Secretary, canceled or repaid.

(4) *Manner of retention of promissory notes and repayment schedules.* An institution shall keep the original promissory notes and repayment schedules until the loans are satisfied. If required to release original documents in order

to enforce the loan, the institution must retain certified true copies of those documents.

(i) An institution shall keep the original paper promissory note or original paper MPN and repayment schedules in a locked, fireproof container.

(ii) If a promissory note was signed electronically, the institution must store it electronically and the promissory note must be retrievable in a coherent format. An original electronically signed MPN must be retained by the institution for 3 years after all the loans made on the MPN are satisfied.

(iii) After the loan obligation is satisfied, the institution shall return the original or a true and exact copy of the note marked ''paid in full'' to the borrower, or otherwise notify the borrower in writing that the loan is paid in full, and retain a copy for the prescribed period.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, NDSL, and Federal Perkins Loans.

(v) Only authorized personnel may have access to the loan documents.

(f) *Enrollment reporting process.* (1) Upon receipt of an enrollment report from the Secretary, an institution must update all information included in the report and return the report to the Secretary—

(i) In the manner and format prescribed by the Secretary; and

(ii) Within the timeframe specified by the Secretary.

(2) Unless it expects to submit its next updated enrollment report to the Secretary within the next 60 days, an institution must notify the Secretary within 30 days after the date the school discovers that—

(i) A loan under title IV of the HEA was made to a student who was enrolled or accepted for enrollment at the institution, and the student has ceased to be enrolled on at least a half-time basis or failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(ii) A student who is enrolled at the institution and who received a loan under title IV of the HEA has changed his or her permanent address.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32345, July 21, 1992; 59 FR 61408, 61415, Nov. 30, 1994; 59 FR 61722, Dec. 1, 1994; 60 FR 61814, Dec. 1, 1995; 61 FR 60492, Nov. 27, 1996; 62 FR 50847, Sept. 26, 1997; 64 FR 58315, Oct. 28, 1999; 67 FR 67076, Nov. 1, 2002; 72 FR 61996, Nov. 1, 2007; 78 FR 65805, Nov. 1, 2013]

§ 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR part 202).

(b) The Secretary considers the Federal Perkins Loan program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1087aa–1087hh)

[52 FR 45747, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61415, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999]

Subpart B—Terms of Loans

SOURCE: 52 FR 45754, Dec. 1, 1987, unless otherwise noted.

§ 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only the promissory note that the Secretary provides. The institution may make only nonsubstantive changes, such as changes to the type style or font, or the addition of items such as the borrower's driver's license number, to this note.

(2)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if—

(A) The note requires the signature of the borrower on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(iii) The promissory note must state the exact amount of the minimum monthly repayment amount if the institution chooses the option under § 674.33(b).

(b) *Provisions of the promissory note*—(1) *Interest.* The promissory note must state that—

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) *Repayment.* (i) Except as otherwise provided in § 674.32, the promissory note must state that the repayment period—

(A) For NDSLs made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For NDSLs made before October 1, 1980 and Federal Perkins Loans, begins 9 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) For purposes of establishing the beginning of the repayment period for NDSL or Perkins loans, the 6- and 9-month grace periods referenced in paragraph (b)(2)(i) of this section exclude any period during which a borrower who is a member of a reserve component of the Armed Forces named in section 10101 of Title 10, United States Code is called or ordered to active duty for a period of more than 30 days. Any single excluded period may not exceed three years and includes the time necessary for the borrower to resume enrollment at the next available regular enrollment period. Any Direct or Perkins loan borrower who is in a grace period when called or ordered to active duty as specified in this paragraph is entitled to a new 6- or 9-month grace period upon completion of the excluded period.

(D) May begin earlier at the borrower's request; and

(E) May vary because of minimum monthly repayments (see § 674.33(b)), extensions of repayment (see § 674.33(c)), forbearance (see § 674.33(d)), or deferments (see §§ 674.34, 674.35, and 674.36);

(ii) The promissory note must state that the borrower shall repay the loan—

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, collection costs, and either penalty or late charges on the loan are canceled upon the death or permanent and total disability of the borrower.

(4) *Prepayment.* The promissory note must state that—

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not—

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Federal Perkins Loan or an NDSL Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with § 674.43(b) (2), (3) and (4).

(B) The amount of the late or penalty charge on an NDSL made for periods of enrollment that began before January 1, 1986 may be—

(*1*) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of $1 for the first month and $2 for each additional month.

(*2*) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of $3.

(*3*) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of $6. (See appendix E of this part)

(iii) The institution may—

(A) Add either the penalty or late charge to the principal the day after the scheduled repayment was due; or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement.

(7) *Assignment.* The promissory note must state that a note may only be assigned to—

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Federal Perkins Loan program.

(8) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not—

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) *Cost of collection.* The promissory note must state that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) *Disclosure of information.* The promissory note must state that—

(i) The institution must disclose to at least one national credit bureau the amount of the loan made to the borrower, along with other relevant information.

(ii) If the borrower defaults on the loan, the institution shall disclose that the borrower has defaulted on the loan, along with other relevant information, to the same national credit bureau to which it originally reported the loan; and

(iii) If the borrower defaults on the loan and the loan is assigned to the Secretary for collection, the Secretary may disclose to a national credit bureau that the borrower has defaulted on the loan, along with other relevant information.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1087dd)

[52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32345, July 21, 1992; 59 FR 61408, 61415, Nov. 30, 1994; 60 FR 61814, Dec. 1, 1995; 62 FR 50848, Sept. 26, 1997; 64 FR 58309, Oct. 28, 1999]

§ 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(i) Nine months from the date the loan was made, or

(ii) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased to be enrolled as at least

a half-time regular student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of § 674.31.

(Authority: 20 U.S.C. 1087dd)

[52 FR 45754, Dec. 1, 1987, as amended at 57 FR 32345, July 21, 1992]

§ 674.33 Repayment.

(a) *Repayment Plan.* (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time regular student.

(2) If the last scheduled payment would be $25 or less the institution may combine it with the next-to-last repayment.

(3) If the installment payment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

(4) The institution shall apply any payment on a loan in the following order:

(i) Collection costs.

(ii) Late charges.

(iii) Accrued interest.

(iv) Principal.

(b) *Minimum monthly repayment*—(1) *Minimum monthly repayment option.* (i) An institution may require a borrower to pay a minimum monthly repayment if—

(A) The promissory note includes a minimum monthly repayment provision specifying the amount of the minimum monthly repayment; and

(B) The monthly repayment of principal and interest for a 10-year repayment period is less than the minimum monthly repayment; or

(ii) An institution may require a borrower to pay a minimum monthly repayment if the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than the minimum monthly repayment.

(2) *Minimum monthly repayment of loans from more than one institution.* If a borrower has received loans from more than one institution and has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, the following rules apply:

(i) If the total of the monthly repayments is equal to at least the minimum monthly repayment, no institution may exercise a minimum monthly repayment option.

(ii) If only one institution exercises the minimum monthly repayment option when the monthly repayment would otherwise be less than the minimum repayment option, that institution receives the difference between the minimum monthly repayment and the repayment owed to the other institution.

(iii) If each institution exercises the minimum repayment option, the minimum monthly repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(3) *Minimum monthly repayment of both Defense and NDSL or Federal Perkins loans from one or more institutions.* If the borrower has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, and if the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month.

(4) *Minimum monthly repayment of loans with differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(5) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year at a time if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see § 674.33(c)); and

(ii) The borrower's scheduled repayment is the minimum monthly repayment described in paragraph (b) of this section.

(6) *Minimum monthly repayment rates.* For the purposes of this section, the minimum monthly repayment rate is—

(i) $15 for a Defense loan;

(ii) $30 for an NDSL Loan or for a Federal Perkins loan made before October 1, 1992, or for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has an outstanding balance of principal or interest owing on any loan made under this part; or

(iii) $40 for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under this part.

(7) The institution shall determine the minimum repayment amount under paragraph (b) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b) of this section by the number of months in the installment interval.

(c) *Extension of repayment period*—(1) *Hardship.* The institution may extend a borrower's repayment period due to prolonged illness or unemployment.

(2) *Low-income individual.* (i) For Federal Perkins loans and NDSLs made on or after October 1, 1980, the institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines during the course of the repayment period that the borrower is a ''low-income individual.'' The borrower qualifies for an extension of the repayment period on the basis of low-income status only during the period in which the borrower meets the criteria described in paragraph (c)(2)(i) (A) or (B) of this section. The term *low-income individual* means the following:

(A) For an unmarried borrower without dependents, an individual whose total income for the preceding calendar year did not exceed 45 percent of the Income Protection Allowance for the current award year for a family of four with one in college.

(B) For a borrower with a family that includes the borrower and any spouse or legal dependents, an individual whose total family income for the preceding calendar year did not exceed 125 percent of the Income Protection Allowance for the current award year for a family with one in college and equal in size to that of the borrower's family.

(ii) The institution shall use the Income Protection Allowance published annually in accordance with section 478 of the HEA in making this determination.

(iii) The institution shall review the borrower's status annually to determine whether the borrower continues to qualify for an extended repayment period based on his or her status as a ''low-income individual.''

(iv) Upon determining that a borrower ceases to qualify for an extended repayment period under this section, the institution shall amend the borrower's repayment schedule. The term of the amended repayment schedule may not exceed the number of months remaining on the original repayment schedule, provided that the institution may not include the time elapsed during any extension of the repayment period granted under this section in determining the number of months remaining on the original repayment schedule.

(3) Interest continues to accrue during any extension of a repayment period.

(d) *Forbearance.* (1) Forbearance means the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Upon receipt of a request and supporting documentation, the institution shall grant the borrower forbearance of principal and, unless otherwise indicated by the borrower, interest renewable at intervals of up to 12 months for periods that collectively do not exceed three years.

(3) The terms of forbearance must be agreed upon, in writing, by the borrower and the institution. The school confirms this agreement by notice to the borrower, and by recording the terms in the borrower's file.

(4) In granting a forbearance under this section, an institution shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (d)(1) of this section.

(5) An institution shall grant forbearance if—

(i) The amount of the payments the borrower is obligated to make on title IV loans each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's total monthly gross income;

(ii) The institution determines that the borrower should qualify for the forbearance due to poor health or for other acceptable reasons; or

(iii) The Secretary authorizes a period of forbearance due to a national military mobilization or other national emergency.

(6) Before granting a forbearance to a borrower under paragraph (d)(5)(i) of this section, the institution shall require the borrower to submit at least the following documentation:

(i) Evidence showing the amount of the most recent total monthly gross income received by the borrower; and

(ii) Evidence showing the amount of the monthly payments owed by the borrower for the most recent month for the borrower's title IV loans.

(7) Interest accrues during any period of forbearance.

(8) The institution may not include the periods of forbearance described in this paragraph in determining the 10-year repayment period.

(e) *Compromise of repayment.* (1) An institution may compromise on the repayment of a defaulted loan if—

(i) The institution has fully complied with all due diligence requirements specified in subpart C of this part; and

(ii) The student borrower pays in a single lump-sum payment—

(A) 90 percent of the outstanding principal balance on the loan under this part;

(B) The interest due on the loan; and

(C) Any collection fees due on the loan.

(2) The Federal share of the compromise repayment must bear the same relation to the institution's share of the compromise repayment as the Federal capital contribution to the institution's loan Fund under this part bears to the institution's capital contribution to the Fund.

(f)(1) *Incentive repayment program.* An institution may establish the following repayment incentives:

(i) A reduction of no more than one percent of the interest rate on a loan on which the borrower has made 48 consecutive, monthly repayments.

(ii) A discount of no more than five percent on the balance owed on a loan which the borrower pays in full prior to the end of the repayment period.

(iii) With the Secretary's approval, any other incentive the institution determines will reduce defaults and replenish its Fund.

(2) *Limitation on the use of funds.* (i) The institution must reimburse its Fund, on at least a quarterly basis, for money lost to its Fund that otherwise would have been paid by the borrower as a result of establishing a repayment incentive under paragraphs (f)(1)(i), (ii) and (iii) of this section.

(ii) An institution may not use Federal funds, including Federal funds from the student loan fund, or institutional funds from the student loan fund to pay for any repayment incentive authorized by this section.

(g) *Closed school discharge*—(1) *General.* (i) The holder of an NDSL or a Federal Perkins Loan discharges the borrower's (and any endorser's) obligation to repay the loan if the borrower did not complete the program of study for which the loan was made because the school at which the borrower was enrolled closed.

(ii) For the purposes of this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary;

(B) ''School'' means a school's main campus or any location or branch of the main campus; and

(C) The ''holder'' means the Secretary or the school that holds the loan.

(2) *Relief pursuant to discharge.* (i) Discharge under this section relieves the borrower of any past or present obligation to repay the loan and any accrued interest or collection costs with respect to the loan.

(ii) The discharge of a loan under this section qualifies the borrower for reimbursement of amounts paid voluntarily

or through enforced collection on the loan.

(iii) A borrower who has defaulted on a loan discharged under this section is not considered to have been in default on the loan after discharge, and such a borrower is eligible to receive assistance under programs authorized by title IV of the HEA.

(iv) The Secretary or the school, if the school holds the loan, reports the discharge of a loan under this section to all credit bureaus to which the status of the loan was previously reported.

(3) *Determination of borrower qualification for discharge by the Secretary.* (i) The Secretary may discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application if the Secretary determines that—

(A) The borrower qualified for and received a discharge on a loan pursuant to 34 CFR 682.402(d) (Federal Family Education Loan Program) or 34 CFR 685.214 (Federal Direct Loan Program), and was unable to receive a discharge on an NDSL or Federal Perkins Loan because the Secretary lacked the statutory authority to discharge the loan; or

(B) Based on information in the Secretary's possession, the borrower qualifies for a discharge.

(ii) With respect to schools that closed on or after November 1, 2013, the Secretary will discharge the borrower's obligation to repay an NDSL or Federal Perkins Loan without an application from the borrower if the Secretary determines that the borrower did not subsequently re-enroll in any title IV-eligible institution within a period of three years from the date the school closed.

(4) *Borrower qualification for discharge.* Except as provided in paragraph (g)(3) of this section, in order to qualify for discharge of an NDSL or Federal Perkins Loan, a borrower must submit to the holder of the loan a written request and sworn statement, and the factual assertions in the statement must be true. The statement need not be notarized but must be made by the borrower under penalty of perjury. In the statement the borrower must—

(i) State that the borrower—

(A) Received the proceeds of a loan to attend a school;

(B) Did not complete the program of study at that school because the school closed while the student was enrolled, or the student withdrew from the school not more than 120 days before the school closed. The Secretary may extend the 120-day period if the Secretary determines that exceptional circumstances related to the school's closing justify an extension. Exceptional circumstances for this purpose may include, but are not limited to: the school's loss of accreditation; The school's discontinuation of the majority of its academic programs; action by the State to revoke the school's license to operate or award academic credentials in the State; or a finding by a State or Federal government agency that the school violated State or Federal law; and

(C) Did not complete and is not in the process of completing the program of study through a teachout at another school as defined in 34 CFR 602.2 and administered in accordance with 34 CFR 602.207(b)(6), by transferring academic credit earned at the closed school to another school, or by any other comparable means;

(ii) State whether the borrower has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and, if so, the amount of any payment received by the borrower or credited to the borrower's loan obligation; and

(iii) State that the borrower—

(A) Agrees to provide to the holder of the loan upon request other documentation reasonably available to the borrower that demonstrates that the borrower meets the qualifications for discharge under this section; and

(B) Agrees to cooperate with the Secretary in enforcement actions in accordance with paragraph (g)(6) of this section and to transfer any right to recovery against a third party to the Secretary in accordance with paragraph (g)(7) of this section.

(5) *Fraudulently obtained loans.* A borrower who secured a loan through fraudulent means, as determined by the ruling of a court or an administrative tribunal of competent jurisdiction,

is ineligible for a discharge under this section.

(6) *Cooperation by borrower in enforcement actions.* (i) In order to obtain a discharge under this section, a borrower must cooperate with the Secretary in any judicial or administrative proceeding brought by the Secretary to recover amounts discharged or to take other enforcement action with respect to the conduct on which the discharge was based. At the request of the Secretary and upon the Secretary's tendering to the borrower the fees and costs that are customarily provided in litigation to reimburse witnesses, the borrower must—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge;

(B) Provide any documents reasonably available to the borrower with respect to those representations; and

(C) If required by the Secretary, provide a sworn statement regarding those documents and representations.

(ii) The holder denies the request for a discharge or revokes the discharge of a borrower who—

(A) Fails to provide the testimony, documents, or a sworn statement required under paragraph (g)(6)(i) of this section; or

(B) Provides testimony, documents, or a sworn statement that does not support the material representations made by the borrower to obtain the discharge.

(7) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) In the case of a loan held by the Secretary, upon discharge under this section, the borrower is deemed to have assigned to and relinquished in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, its affiliates and their successors, its sureties, and any private fund, including the portion of a public fund that represents funds received from a private party.

(ii) The provisions of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower, limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section limits or forecloses the borrower's right to pursue legal and equitable relief regarding disputes arising from matters unrelated to the discharged NDSL or Federal Perkins Loan.

(8) *Discharge procedures.* (i) After confirming the date of a school's closure, the holder of the loan identifies any NDSL or Federal Perkins Loan borrower who appears to have been enrolled at the school on the school closure date or to have withdrawn not more than 120 days prior to the closure date.

(ii) If the borrower's current address is known, the holder of the loan mails the borrower a discharge application and an explanation of the qualifications and procedures for obtaining a discharge. The holder of the loan also promptly suspends any efforts to collect from the borrower on any affected loan. The holder of the loan may continue to receive borrower payments.

(iii) In the case of a loan held by the Secretary, if the borrower's current address is unknown, the Secretary attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by consulting with representatives of the closed school or representatives of the closed school's third-party billing and collection servicers, the school's licensing agency, the school accrediting agency, and other appropriate parties. If the Secretary learns the new address of a borrower, the Secretary mails to the borrower a discharge application and explanation and suspends collection, as described in paragraph (g)(8)(ii) of this section.

(iv) In the case of a loan held by a school, if the borrower's current address is unknown, the school attempts to locate the borrower and determine the borrower's potential eligibility for a discharge under this section by taking steps required to locate the borrower under § 674.44.

(v) If the borrower fails to submit the written request and sworn statement described in paragraph (g)(4) of this section within 60 days of the holder of the loan's mailing the discharge application, the holder of the loan resumes collection and grants forbearance of principal and interest for the period during which collection activity was suspended.

(vi) Upon resuming collection on any affected loan, the Secretary provides the borrower another discharge application and an explanation of the requirements and procedures for obtaining a discharge.

(vii) If the holder of the loan determines that a borrower who requests a discharge meets the qualifications for a discharge, the holder of the loan notifies the borrower in writing of that determination.

(viii) In the case of a loan held by the Secretary, if the Secretary determines that a borrower who requests a discharge does not meet the qualifications for a discharge, the Secretary notifies that borrower, in writing, of that determination and the reasons for the determination.

(ix) In the case of a loan held by a school, if the school determines that a borrower who requests a discharge does not meet the qualifications for discharge, the school submits that determination and all supporting materials to the Secretary for approval. The Secretary reviews the materials, makes an independent determination, and notifies the borrower in writing of the determination and the reasons for the determination.

(x) In the case of a loan held by a school and discharged by either the school or the Secretary, the school must reimburse its Fund for the entire amount of any outstanding principal and interest on the loan, and any collection costs charged to the Fund as a result of collection efforts on a discharged loan. The school must also reimburse the borrower for any amount of principal, interest, late charges or collection costs the borrower paid on a loan discharged under this section.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority:20 U.S.C. 1087dd)

[52 FR 45754, Dec. 1, 1987, as amended at 57 FR 32345, July 21, 1992; 57 FR 60706, Dec. 21, 1992; 59 FR 61409, Nov. 30, 1994; 60 FR 61814, Dec. 1, 1995; 62 FR 50848, Sept. 26, 1997; 64 FR 58309, Oct. 28, 1999; 67 FR 67076, Nov. 1, 2002; 74 FR 55660, Oct. 28, 2009; 78 FR 65805, Nov. 1, 2013; 81 FR 76078, Nov. 1, 2016]

§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.

(a) The borrower may defer making a scheduled installment repayment on a Federal Perkins loan, an NDSL, or a Defense loan, regardless of contrary provisions of the borrower's promissory note and regardless of the date the loan was made, during periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is—

(i) Enrolled and in attendance as a regular student in at least a half-time course of study at an eligible institution;

(ii) Enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Secretary;

(iii) Engaged in graduate or postgraduate fellowship-supported study (such as a Fulbright grant) outside the United States; or

(iv) Enrolled in a course of study that is part of a rehabilitation training program for disabled individuals approved by the Secretary as described in paragraph (g) of this section.

(2) No borrower is eligible for a deferment under paragraph (b)(1) of this section while serving in a medical internship or residency program, except for a residency program in dentistry.

(3) The institution of higher education at which the borrower is enrolled does not need to be participating in the Federal Perkins Loan program

for the borrower to qualify for a deferment.

(4) If a borrower is attending an institution of higher education as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to a deferment for 12 months.

(5) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower of a Federal Perkins loan, an NDSL, or a Defense loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60.

(d) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is seeking and unable to find full-time employment.

(e) The borrower need not repay principal, and interest does not accrue, for periods of up to one year at a time (except that a deferment under paragraph (e)(4) of this section may be granted for the lesser of the borrower's full term of service in the Peace Corps or the borrower's remaining period of economic hardship deferment eligibility) that, collectively, do not exceed 3 years, during which the borrower is suffering an economic hardship, if the borrower provides documentation satisfactory to the institution showing that the borrower is within any of the categories described in paragraphs (e)(1) through (e)(4) of this section.

(1) Has been granted an economic hardship deferment under either the Federal Direct Loan Program or the FFEL programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Federal Perkins loan.

(2) Is receiving payment under a Federal or state public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or state general public assistance.

(3) Is working full-time and earning a total monthly gross income that does not exceed the greater of—

(i) The monthly earnings of an individual earning the minimum wage described in section 6 of the Fair Labor Standards Act of 1938; or

(ii) An amount equal to 150 percent of the poverty guideline applicable to the borrower's family size as published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). If a borrower is not a resident of a State identified in the poverty guidelines, the poverty guideline to be used for the borrower is the poverty guideline (for the relevant family size) used for the 48 contiguous States.

(4) Is serving as a volunteer in the Peace Corps.

(5) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraph (e)(3) of this section, the institution shall require the borrower to submit a copy of the borrower's Federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.

(6)(i) For purposes of paragraph (e)(3) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(ii) For purposes of paragraph (e)(3)(ii) of this section, family size means the number that is determined by counting the borrower, the borrower's spouse, and the borrower's children, including unborn children who will be born during the period covered by the deferment, if the children receive more than half their support from the borrower. A borrower's family size includes other individuals if, at the time the borrower requests the economic hardship deferment, the other individuals—

(A) Live with the borrower; and

(B) Receive more than half their support from the borrower and will continue to receive this support from the borrower for the year the borrower certifies family size. Support includes money, gifts, loans, housing, food, clothes, car, medical and dental care, and payment of college costs.

(f)(1) To qualify for a deferment for study as part of a graduate fellowship

program pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution with a statement from an authorized official of the borrower's graduate fellowship program certifying—

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance on a full-time basis into an eligible graduate fellowship program; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (b)(1)(ii) of this section, an eligible graduate fellowship program is a fellowship program that—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(g) To qualify for a deferment for study in a rehabilitation training program, pursuant to paragraph (b)(1)(iv) of this section, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals and must provide the institution with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program—

(i) Is licensed, approved, certified, or otherwise recognized by one of the following entities as providing rehabilitation training to disabled individuals—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

(h) *Military service deferment.* (1) The borrower need not pay principal, and interest does not accrue, on a Federal Perkins Loan, an NDSL, or a Defense Loan, for any period during which the borrower is—

(i) Serving on active duty during a war or other military operation or national emergency; or

(ii) Performing qualifying National Guard duty during a war or other military operation or national emergency.

(2) *Serving on active duty during a war or other military operation or national emergency* means service by an individual who is—

(i) A Reserve of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, or 12306;

(ii) A retired member of an Armed Force ordered to active duty under 10 U.S.C. 688 for service in connection with a war or other military operation or national emergency, regardless of the location at which such active duty service is performed; or

(iii) Any other member of an Armed Force on active duty in connection

with such emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the member is normally assigned.

(3) *Qualifying National Guard duty during a war or other operation or national emergency* means service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f) in connection with a war, other military operation, or national emergency declared by the President and supported by Federal funds.

(4) As used in this paragraph—

(i) *Active duty* means active duty as defined in 10 U.S.C. 101(d)(1) except that it does not include active duty for training or attendance at a service school;

(ii) *Military operation* means a contingency operation as defined in 10 U.S.C. 101(a)(13); and

(iii) *National emergency* means the national emergency by reason of certain terrorist attacks declared by the President on September 14, 2001, or subsequent national emergencies declared by the President by reason of terrorist attacks.

(5) These provisions do not authorize the refunding of any payments made by or on behalf of a borrower during a period for which the borrower qualified for a military service deferment.

(6) For a borrower whose active duty service includes October 1, 2007, or begins on or after that date, the deferment period ends 180 days after the demobilization date for each period of service described in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

(7) Without supporting documentation, a military service deferment may be granted to an otherwise eligible borrower for a period not to exceed 12 months from the date of the qualifying eligible service based on a request from the borrower or the borrower's representative.

(i) *Post-active duty student deferment.* (1) Effective October 1, 2007, a borrower of a Federal Perkins loan, an NDSL, or a Defense loan serving on active duty military service on that date, or who begins serving on or after that date, need not pay principal, and interest does not accrue for up to 13 months following the conclusion of the borrower's active duty military service and initial grace period if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled, on at least a half-time basis, in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (i)(1) of this section ''Active duty'' means active duty as defined in section 101(d)(1) of title 10, United States Code, for at least a 30-day period, except that—

(i) Active duty includes active State duty for members of the National Guard under which the Governor activates National Guard personnel based on State statute or policy and the activities of the National Guard are paid for with State funds;

(ii) Active duty includes full-time National Guard duty under which the Governor is authorized, with the approval of the President or the U.S. Secretary of Defense, to order a member to State active duty and the activities of the National Guard are paid for with Federal funds;

(iii) Active duty does not include active duty for training or attendance at a service school; and

(iv) Active duty does not include employment in a full-time, permanent position in the National Guard unless the borrower employed in such a position is reassigned to active duty under paragraph (i)(2)(i) of this section or full-time National Guard duty under paragraph (i)(2)(ii) of this section.

(3) If the borrower returns to enrolled student status, on at least a half-time basis, during the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status, on at least a half-time basis.

(4) If a borrower qualifies for both a military service deferment and a post-active duty student deferment under

both paragraphs (h) and (i) of this section, the 180-day post-demobilization military service deferment period and the 13-month post-active duty student deferment period apply concurrently.

(j) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), (g), (h), and (i) of this section and the period described in paragraph (k) of this section in determining the 10-year repayment period.

(k) The borrower need not pay principal and interest does not accrue until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), (f), (g), and (h) of this section.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1087dd)

[59 FR 61410, Nov. 30, 1994, as amended at 60 FR 61815, Dec. 1, 1995; 62 FR 50848, Sept. 26, 1997; 64 FR 57531, Oct. 25, 1999; 64 FR 58311, Oct. 28, 1999; 67 FR 67076, Nov. 1, 2002; 71 FR 45697, Aug. 9, 2006; 72 FR 61996, Nov. 1, 2007; 73 FR 63247, Oct. 23, 2008; 78 FR 65805, Nov. 1, 2013]

§ 674.35 Deferment of repayment—Federal Perkins loans made before July 1, 1993.

(a) The borrower may defer repayment on a Federal Perkins Loan made before July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.59);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer (see § 674.60);

(4) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see § 674.60);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph—

(i) ''Temporarily totally disabled'', with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) ''Temporarily totally disabled'', with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which—

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(3) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its internship program; and

(iii) The internship or residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a healthcare facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months—

(1) During which the borrower is—

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time regular student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower—

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than $1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the

institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(h) The institution may not include the deferment periods described in paragraphs (b), (c), (d), (e), (f), and (g) of this section and the period described in paragraph (i) of this section when determining the 10-year repayment period.

(i) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), and (f) of this section.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1087dd)

[52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32345, July 21, 1992; 59 FR 1652, Jan. 12, 1994. Redesignated and amended at 59 FR 61410, 61411, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997; 64 FR 58315, Oct. 28, 1999]

§ 674.36 Deferment of repayment—NDSLs made on or after October 1, 1980, but before July 1, 1993.

(a) The borrower may defer repayment on an NDSL Loan made on or after October 1, 1980, but before July 1, 1993, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.59);

(2) A Peace Corps volunteer (see § 674.60);

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see § 674.60).

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Service Act of 1973 (ACTION programs). The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating proverty and poverty-related human, social, and environmental conditions.

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) ''Temporarily totally disabled'' with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) ''Temporarily totally disabled'' with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship—

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (d)(2) of this section; and

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(e) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33)(c)).

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), (d), and (e) of this section and the period described in paragraph (g) of this section when determining the 10-year repayment period.

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), and (d) of this section.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1087dd)

[52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32345, July 21, 1992; 59 FR 1652, Jan. 12, 1994. Redesignated and amended at 59 FR 61410, 61411, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997; 64 FR 58315, Oct. 28, 1999]

§ 674.37 Deferment of repayment—NDSLs made before October 1, 1980 and Defense loans.

(a) A borrower may defer repayment—

(1) On an NDSL made before October 1, 1980 during the periods described in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time regular student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see § 674.59);

(2) A Peace Corps volunteer (see § 674.60); or

(3) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs) (see § 674.60).

(d) The institution shall exclude the deferment periods described in paragraphs (b), (c), and (e) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 425, 1087dd)

[52 FR 45754, Dec. 1, 1987, as amended at 57 FR 32345, July 21, 1992; 59 FR 1652, Jan. 12, 1994. Redesignated at 59 FR 61410, Nov. 30, 1994, as amended at 62 FR 50848, Sept. 26, 1997; 64 FR 58315, Oct. 28, 1999]

§ 674.38 Deferment procedures.

(a)(1) Except as provided in paragraph (a)(5) of this section, a borrower must request the deferment and provide the institution with all information and documents required by the institution by the date that the institution establishes.

(2) After receiving a borrower's written or verbal request, an institution may grant a deferment under §§ 674.34(b)(1)(ii), 674.34(b)(1)(iii), 674.34(b)(1)(iv), 674.34(d), 674.34(e), 674.34(h), and 674.34(i) if the institution is able to confirm that the borrower has received a deferment on another Perkins Loan, a FFEL Loan, or a Direct Loan for the same reason and the same time period. The institution may grant the deferment based on information from the other Perkins Loan holder, the FFEL Loan holder or the Secretary or from an authoritative electronic database maintained or authorized by the Secretary that supports eligibility for the deferment for the same reason and the same time period.

(3) An institution may rely in good faith on the information it receives under paragraph (a)(2) of this section when determining a borrower's eligibility for a deferment unless the institution, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. An institution must resolve any discrepant information before granting a deferment under paragraph (a)(2) of this section.

(4) An institution that grants a deferment under paragraph (a)(2) of this section must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

(5) In the case of an in school deferment, the institution may grant the deferment based on student enrollment information showing that a borrower is enrolled as a regular student on at least a half-time basis, if the institution notifies the borrower of the deferment and of the borrower's option to cancel the deferment and continue paying on the loan.

(6) In the case of a military service deferment under §§ 674.34(h) and 674.35(c)(1), a borrower's representative may request the deferment on behalf of the borrower. An institution that grants a military service deferment based on a request from a borrower's representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The institution may also notify

the borrower's representative of the outcome of the deferment request.

(7) If the borrower fails to meet the requirements of paragraph (a) (1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b)(1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution—

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall—

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c)(1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

(d) The institution must determine the continued eligibility of a borrower for a deferment at least annually, except that a borrower engaged in service described in §§ 674.34(e)(6), 674.35(c)(3), 674.36(c)(2), 674.37(c)(2), and § 674.60(a)(1) must be granted a deferment for the lesser of the borrower's full term of service in the Peace Corps, or the borrower's remaining period of eligibility for a deferment under § 674.34(e), not to exceed 3 years.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 425, 1087dd)

[52 FR 45754, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988. Redesignated and amended at 59 FR 61410, 61411, Nov. 30, 1994; 64 FR 57531, Oct. 25, 1999; 64 FR 58315, Oct. 28, 1999; 72 FR 61996, Nov. 1, 2007]

§ 674.39 Loan rehabilitation.

(a) Each institution must establish a loan rehabilitation program for all borrowers for the purpose of rehabilitating defaulted loans made under this part, except for loans for which a judgment has been secured or loans obtained by fraud for which the borrower has been convicted of, or has pled nolo contendere or guilty to, a crime involving fraud in obtaining title IV, HEA program assistance. The institution's loan rehabilitation program must provide that—

(1) A defaulted borrower is notified of the option and consequences of rehabilitating a loan; and

(2) A loan is rehabilitated if the borrower—

(i) Requests rehabilitation; and

(ii) Makes a full monthly payment—as determined by the institution—within 20 days of the due date, each month for 9 consecutive months.

(b) Within 30 days of receiving the borrower's last on-time, consecutive, monthly payment, the institution must—

(1) Return the borrower to regular repayment status;

(2) Treat the first payment made under the nine consecutive payments as the first payment under the 10-year repayment maximum; and

(3) Instruct any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(c) Collection costs on a rehabilitated loan—

(1) If charged to the borrower, may not exceed 24 percent of the unpaid principal and accrued interest as of the date following application of the twelfth payment;

(2) That exceed the amounts specified in paragraph (c)(1) of this section, may be charged to an institution's Fund

until July 1, 2002 in accordance with § 674.47(e)(5); and

(3) Are not restricted to 24 percent in the event the borrower defaults on the rehabilitated loan.

(d) After rehabilitating a defaulted loan and returning to regular repayment status, the borrower regains the balance of the benefits and privileges of the promissory note as applied prior to the borrower's default on the loan. Nothing in this paragraph prohibits an institution from offering the borrower flexible repayment options following the borrower's return to regular repayment status on a rehabilitated loan.

(e) The borrower may rehabilitate a defaulted loan only one time.

(Approved by the Office of Management and Budget under control number 1845–0023)

[64 FR 58311, Oct. 28, 1999, as amended at 65 FR 65614, Nov. 1, 2000; 67 FR 67077, Nov. 1, 2002; 71 FR 45698, Aug. 9, 2006; 74 FR 55661, Oct. 28, 2009; 78 FR 65805, Nov. 1, 2013]

EDITORIAL NOTE: At 75 FR 55661, Oct. 28, 2010, § 674.39, was amended by revising the authority citation at the end of the section however, the amendment could not be incorporated because there was no authority citation at the end to revise.

§ 674.40 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, NDSL, and Perkins loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in § 674.31(b) (2), loan repayment terms; § 674.33(b), minimum repayment rates; or § 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

[52 FR 45754, Dec. 1, 1987. Redesignated at 59 FR 61410, Nov. 30, 1994]

Subpart C—Due Diligence

SOURCE: 52 FR 45555, Nov. 30, 1987, unless otherwise noted.

§ 674.41 Due diligence—general requirements.

(a) *General.* Each institution shall exercise due diligence in collecting loans by complying with the provisions in this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart—

(1) Keep the borrower informed, on a timely basis, of all changes in the program that affect his or her rights or responsibilities; and

(2) Respond promptly to all inquiries from the borrower.

(3) Provide the borrower with information on the availability of the Student Loan Ombudsman's office if the borrower disputes the terms of the loan in writing and the institution does not resolve the dispute.

(b) *Coordination of information.* An institution shall ensure that information available in its offices (including the admissions, business, alumni, placement, financial aid and registrar's offices) is provided to those offices responsible for billing and collecting loans, in a timely manner, as needed to determine—

(1) The enrollment status of the borrower;

(2) The expected graduation or termination date of the borrower;

(3) The date the borrower withdraws, is expelled or ceases enrollment on at least a half-time basis; and

(4) The current name, address, telephone number and Social Security number of the borrower.

(Approved by the Office of Management and Budget under control number 1845–0023)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 59 FR 61411, Nov. 30, 1994; 64 FR 58312, Oct. 28, 1999]

§ 674.42 Contact with the borrower.

(a) *Disclosure of repayment information.* The institution must disclose the following information in a written statement provided to the borrower either shortly before the borrower ceases at least half-time study at the institution or during the exit interview. If the borrower enters the repayment period without the institution's knowledge,

the institution must provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period. The institution must disclose the following information:

(1) The name and address of the institution to which the debt is owed and the name and address of the official or servicing agent to whom communications should be sent.

(2) The name and address of the party to which payments should be sent.

(3) The estimated balance owed by the borrower on the date on which the repayment period is scheduled to begin.

(4) The stated interest rate on the loan.

(5) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments.

(6) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan at any time without penalty.

(7) A description of the charges imposed for failure of the borrower to pay all or part of an installment when due.

(8) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or the institution to collect on the loan.

(9) The total interest charges which the borrower will pay on the loan pursuant to the projected repayment schedule.

(10) The contact information of a party who, upon request of the borrower, will provide the borrower with a copy of his or her signed promissory note.

(11) An explanation that if a borrower is required to make minimum monthly repayments, and the borrower has received loans from more than one institution, the borrower must notify the institution if he or she wants the minimum monthly payment determination to be based on payments due to other institutions.

(b) *Exit counseling.* (1) An institution must ensure that exit counseling is conducted with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must ensure that exit counseling is conducted shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the institution approves for credit, the borrower may be provided with written counseling material by mail within 30 days after the borrower completes the program. If a borrower withdraws from the institution without the institution's prior knowledge or fails to complete an exit counseling session as required, the institution must ensure that exit counseling is provided through either interactive electronic means or by mailing counseling materials to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from the institution or failed to complete exit counseling as required.

(2) The exit counseling must—

(i) Inform the student as to the average anticipated monthly repayment amount based on the student's indebtedness or on the average indebtedness of students who have obtained Perkins loans for attendance at the institution or in the borrower's program of study;

(ii) Explain to the borrower the options to prepay each loan and pay each loan on a shorter schedule;

(iii) Review for the borrower the option to consolidate a Federal Perkins Loan, including the consequences of consolidating a Perkins Loan. Information on the consequences of loan consolidation must include, at a minimum—

(A) The effects of consolidation on total interest to be paid, fees to be paid, and length of repayment;

(B) The effects of consolidation on a borrower's underlying loan benefits, including grace periods, loan forgiveness, cancellation, and deferment opportunities;

(C) The options of the borrower to prepay the loan or to change repayment plans; and

(D) That borrower benefit programs may vary among different lenders;

(iv) Include debt-management strategies that are designed to facilitate repayment;

(v) Explain the use of a Master Promissory Note;

(vi) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(vii) Describe the likely consequences of default, including adverse credit reports, delinquent debt collection procedures under Federal law, and litigation;

(viii) Emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower has not completed the program, has not completed the program within the regular time for program completion, is unable to obtain employment upon completion, or is otherwise dissatisfied with or did not receive educational or other services that the borrower purchased from the institution;

(ix) Provide—

(A) A general description of the terms and conditions under which a borrower may obtain full or partial forgiveness or cancellation of principal and interest, defer repayment of principal or interest, or be granted an extension of the repayment period or a forbearance on a title IV loan; and

(B) A copy, either in print or by electronic means, of the information the Secretary makes available pursuant to section 485(d) of the HEA;

(x) Require the borrower to provide current information concerning name, address, social security number, references, and driver's license number, the borrower's expected permanent address, the address of the borrower's next of kin, as well as the name and address of the borrower's expected employer;

(xi) Review for the borrower information on the availability of the Student Loan Ombudsman's office;

(xii) Inform the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS) and how NSLDS can be used to obtain title IV loan status information; and

(xiii) A general description of the types of tax benefits that may be available to borrowers.

(3) If exit counseling is conducted through interactive electronic means, the institution must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(4) The institution must maintain documentation substantiating the institution's compliance with this section for each borrower.

(c) *Contact with the borrower during the initial and post deferment grace periods.* (1)(i) For loans with a nine-month initial grace period (NDSLs made before October 1, 1980 and Federal Perkins loans), the institution shall contact the borrower three times within the initial grace period.

(ii) For loans with a six-month initial or post deferment grace period (loans not described in paragraph (b)(1)(i) of this section), the institution shall contact the borrower twice during the grace period.

(2)(i) The institution shall contact the borrower for the first time 90 days after the commencement of any grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information:

(A) The total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan.

(B) The date and amount of the next required payment.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of any grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.

(iii) The institution shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the

date and amount of the first required payment.

(Approved by the Office of Management and Budget under control number 1845–0023)

(Authority: U.S.C. 424, 1087cc, 1087cc–1)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32346, July 21, 1992; 59 FR 61411, 61415, Nov. 30, 1994; 64 FR 58312, Oct. 28, 1999; 67 FR 67077, Nov. 1, 2002; 74 FR 55661, Oct. 28, 2009]

§ 674.43 Billing procedures.

(a) The term *billing procedures*, as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use billing procedures that include at least the following steps:

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.

(2) If the institution does not use a coupon system, it shall send to the borrower—

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(3) Notwithstanding paragraph (a)(2)(ii) of this section, if the borrower elects to make payment by means of an electronic transfer of funds from the borrower's bank account, the institution shall send to the borrower an annual statement of account.

(b)(1) An institution shall send a first overdue notice within 15 days after the due date for a payment if the institution has not received—

(i) A payment:

(ii) A request for deferment; or

(iii) A request for postponement or for cancellation.

(2) Subject to § 674.47(a), the institution may assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure—

(i) Any part of an installment payment not made when due, or

(ii) A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.

(3) The institution shall determine the amount of the late charge imposed for loans described in paragraph (b)(2) of this section based on either—

(i) Actual costs incurred for actions required under this section to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.

(4) The institution may not require a borrower to pay late charges imposed under paragraph (b)(3) of this section in an amount, for each late payment or request, exceeding 20 percent of the installment payment most recently due.

(5) The institution—

(i) Shall determine the amount of the late or penalty charge imposed on loans not described in paragraph (b)(2) of this section in accordance with § 674.31(b)(5) (See appendix E); and

(ii) May assess this charge only during the period described in paragraph (b)(2) of this section.

(6) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution—

(i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or

(ii) Demands payment for that amount in full no later than the due date of the next installment.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:

(1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must

inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, or a request for deferment. postponement, or cancellation, and if—

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to seek deferment, postponement, or cancellation of the loan.

(e)(1) An institution that accelerates a loan as provided in § 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall—

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g)(1) An institution shall ensure that any funds collected as a result of billing the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(Approved by the Office of Management and Budget under control number 1845–0023)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32346, July 21, 1992; 59 FR 61412, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999; 67 FR 67077, Nov. 1, 2002]

§ 674.44 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include—

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquiries of information operators in the locale of the borrower's last known address; and

(3) If, after following the procedures in paragraph (a) of this section, an institution is still unable to locate a borrower, the institution may use the Internal Revenue Service skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall—

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of

this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 59 FR 61412, Nov. 30, 1994]

§ 674.45 Collection procedures.

(a) The term ''collection procedures,'' as used in this subpart, includes that series of more intensive efforts, including litigation as described in § 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with § 674.43(f), the institution shall—

(1) Report the account as being in default to any one national credit bureau; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b)(1) An institution must report to any national credit bureau to which it reported the default, according to the reporting procedures of the national credit bureau, any changes to the account status of the loan.

(2) The institution must resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan.

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall—

(i) Litigate in accordance with the procedures in § 674.46;

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm; or

(iii) Submit the account for assignment to the Secretary in accordance with the procedures set forth in § 674.50.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) If the institution is unable to place the loan in repayment as described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

(e)(1) Subject to § 674.47(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.

(2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and §§ 674.44, 674.46, 674. 48, and 674.49, based on either—

(i) Actual costs incurred for these actions with regard to the individual borrower's loan; or

(ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

(3) For loans placed with a collection firm on or after July 1, 2008, reasonable collection costs charged to the borrower may not exceed—

(i) For first collection efforts, 30 percent of the amount of principal, interest, and late charges collected;

(ii) For second and subsequent collection efforts, 40 percent of the amount

of principal, interest, and late charges collected; and

(iii) For collection efforts resulting from litigation, 40 percent of the amount of principal, interest, and late charges collected plus court costs.

(4) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

(f)(1) An institution shall ensure that any funds collected from the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(g) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(h) As part of the collection activities provided for in this section, the institution must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

(Approved by the Office of Management and Budget under control number 1845–0023)

(Authority: 20 U.S.C. 424, 1087cc, 1091a)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32346, July 21, 1992; 59 FR 61412, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997; 64 FR 58312, Oct. 28, 1999; 67 FR 67077, Nov. 1, 2002; 72 FR 61997, Nov. 1, 2007]

§ 674.46 Litigation procedures.

(a)(1) If the collection efforts described in § 674.45 do not result in the repayment of a loan, the institution shall determine at least once every two years whether—

(i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Federal Perkins, NDSL and National Defense Student Loans held by that institution, is more than $500;

(ii) The borrower can be located and served with process;

(iii)(A) The borrower has sufficient assets attachable under State law to satisfy a major portion of the oustanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower does not have a defense that will bar judgment for the institution; and

(v) The expected cost of litigation, including attorney's fees, does not exceed the amount which can be recovered from the borrower.

(2) The institution shall sue the borrower if it determines that the conditions in paragraph (a)(1) of this section are met.

(3) The institution may sue a borrower in default, even if the conditions in paragraph (a)(1) of this section are not met.

(b) The institution shall assess against and attempt to recover from the borrower—

(1) All litigation costs, including attorney's fees, court costs and other related costs, to the extent permitted under applicable law; and

(2) All prior collection costs incurred and not yet paid by the borrower.

(c)(1) An institution shall ensure that any funds collected as a result of litigation procedures are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(d) If the institution is unable to collect the full amount owing on the loan after following the procedures set forth

in §§ 674.41 through 674.46, the institution may—

(1) Submit the account to the Secretary for assignment in accordance with the procedures in § 674.50; or

(2) With the Secretary's approval, refer the account to the Department for collection.

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 59 FR 61412, 61415, Nov. 30, 1994; 67 FR 67077, Nov. 1, 2002]

§ 674.47 Costs chargeable to the Fund.

(a) *General: Billing costs.* (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with § 674.43(b)(2) the cost of actions taken with regard to past-due payments on the loan.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the penalty or late charges, the institution may charge the Fund for only that unpaid portion of the cost of telephone calls to the borrower made pursuant to § 674.43 to demand payment of overdue amounts on the loan.

(b) *General: Collection costs.* (1) Except as provided in paragraph (d) of this section, the institution shall assess against the borrower, in accordance with §§ 674.45(e) and 674.46(b), the costs of actions taken on the loan obligation pursuant to §§ 674.44, 674.45, 674.46, 674.48 and 674.49.

(2) If the amount recovered from the borrower does not suffice to pay the amount on the past-due payments late charges, and these collection costs, the institution may charge and Fund the unpaid collection costs in accordance with paragraph (e) of this section.

(c) *Waiver: Late charges.* The institution may waive late charges assessed against a borrower who repays the full amount of the past-due payments on a loan.

(d) *Waiver: collection costs.* Before filing suit on a loan, the institution may waive collection costs as follows:

(1) The institution may waive the percentage of collection costs applicable to the amount then past-due on a loan equal to the percentage of that past-due balance that the borrower pays within 30 days after the date on which the borrower and the institution enter into a written repayment agreement on the loan.

(2) The institution may waive all collection costs in return for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following collection costs waived under paragraph (d) of this section or not paid by the borrower:

(1) A reasonable amount for the cost of a successful address search required in § 674.44(b).

(2) Costs related to the use of credit bureaus as provided in § 674.45(b)(1).

(3) For first collection efforts pursuant to § 674.45(a)(2), an amount that does not exceed 30 percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to § 674.45(c)(1)(ii), an amount that does not exceed 40 percent of the amount of principal, interest and late charges collected.

(5) Until July 1, 2002 on loans rehabilitated pursuant to § 674.39, amounts that exceed the amounts specified in § 674.39(c)(1) but are less than—

(i) 30 percent if the loan was rehabilitated while in a first collection effort; or

(ii) 40 percent if the loan was rehabilitated while in a second collection effort.

(6) For collection costs resulting from litigation, including attorney's fees, an amount that does not exceed the sum of—

(i) Court costs specified in 28 U.S.C. 1920;

(ii) Other costs incurred in bankruptcy proceedings in taking actions required or authorized under § 674.49;

(iii) Costs of other actions in bankruptcy proceedings to the extent that those costs, together with costs described in paragraph (e)(5)(ii) of this section, do not exceed 40 percent of the total amount of judgment obtained on the loan; and

(iv) 40 percent of the total amount recovered from the borrower in any other proceeding.

(7) If a collection firm agrees to perform or obtain the performance of both

collection and litigation services on a loan, an amount for both functions that does not exceed the sum of 40 percent of the amount of principal, interest and late charges collected on the loan, plus court costs specified in 28 U.S.C. 1920.

(f) *Records*. For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in § 674.19.

(g) *Cessation of collection activity of defaulted accounts*. An institution may cease collection activity on a defaulted account with a balance of less than $200, including outstanding principal, accrued interest, collection costs, and late charges, if—

(1) The institution has carried out the due diligence procedures described in subpart C of this part with regard to this account; and

(2) For a period of at least 4 years, the borrower has not made a payment on the account, converted the account to regular repayment status, or applied for a deferment, postponement, or cancellation on the account.

(h) *Write-offs of accounts*. (1) Notwithstanding any other provision of this subpart, an institution may write off an account, including outstanding principal, accrued interest, collection costs, and late charges, with a balance of—

(i) Less than $25; or

(ii) Less than $50 if, for a period of at least 2 years, the borrower has been billed for this balance in accordance with § 674.43(a).

(2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) When the institution writes off an account, the borrower is relieved of all repayment obligations.

(Approved by the Office of Management and Budget under control number 1845–0023)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 57 FR 32346, July 21, 1992; 57 FR 60706, Dec. 21, 1992; 59 FR 61412, Nov. 30, 1994; 60 FR 61815, Dec. 1, 1995; 64 FR 58313, Oct. 28, 1999; 67 FR 67077, Nov. 1, 2002]

§ 674.48 Use of contractors to perform billing and collection or other program activities.

(a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.

(b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties, including decisions regarding cancellation, postponement, or deferment of repayment, extension of the repayment period, other billing and collection matters, and the safeguarding of all funds collected by its employees and contractors.

(c) If an institution uses a billing service to carry out billing procedures under § 674.43, the institution shall ensure that the service—

(1) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's Social Security number; and

(iii) Amounts collected from the borrower;

(2) Provides at least quarterly, a statement to the institution with a listing of its charges for skip-tracing activities and telephone calls;

(3) Does not deduct its fees from the amount is receives from borrowers;

(4)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lock-box maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days; and

(5) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(d) If the institution uses a collection firm, the institution shall ensure that the firm—

(1)(i) Instructs the borrower to remit payment directly to the institution;

(ii) Instructs the borrower to remit payment to a lockbox maintained for the institution; or

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days, after deducting its fees if authorized to do so by the institution; and

(2) Provides at least quarterly, a statement to the institution which shows—

(i) Its activities with regard to each borrower;

(ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's Social Security number;

(iii) Amounts collected from the borrower; and

(3) Maintains a fidelity bond or comparable insurance in accordance with the requirements in paragraph (f) of this section.

(e) If an institution uses a billing service to carry out § 674.43 (billing procedures), it may not use a collection firm that—

(1) Owns or controls the billing service;

(2) Is owned or controlled by the billing service; or

(3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(f)(1) An institution that employs a third party to perform billing or collection services required under this subpart shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance in accordance with the requirements of this paragraph.

(2) If the institution does not authorize the third party to deduct its fees from payments from borrowers, the institution shall ensure that the party is bonded or insured in an amount not less than the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party.

(3) In the institution authorizes the third party performing collection services to deduct its fees from payments from borrowers, the institution shall ensure that—

(i) If the amount of funds that the institution reasonably expects to be paid over a two-month period on accounts it refers to the party is less than $100,000, the party is bonded or insured in an amount equal to the lesser of—

(A) Ten times the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party; or

(B) The total amount of funds that the party demonstrates will be repaid over a two-month period on all accounts of any kind on which it performs billing and collection services; and

(ii) If the amount of funds that the institution reasonably expects to be repaid over a two-month period on accounts it refers to the party is more than $100,000, the institution shall ensure that the party has and maintains in effect a fidelity bond or comparable insurance—

(A) Naming the institution as beneficiary; and

(B) In an amount not less than the amount of funds reasonably expected to be repaid on accounts referred by the institution to the party during a two-month period.

(4) The institution shall review annually the amount of repayments expected to be made on accounts it refers to a third party for billing or collection services, and shall ensure that the amount of the fidelity bond or insurance coverage maintained continues to meet the requirements of this paragraph.

(Approved by the Office of Management and Budget under control number 1845–0023)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61412, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999]

§ 674.49 Bankruptcy of borrower.

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually

by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower.

(b) *Proof of claim.* The institution must file a proof of claim in the bankruptcy proceeding unless—

(1) In the case of a proceeding under chapter 7 of the Bankruptcy Code, the notice of meeting of creditors states that the borrower has no assets, or

(2) In the case of a bankruptcy proceeding under either Chapter 7 or Chapter 13 of the Bankruptcy Code in which the repayment plan proposes that the borrower repay less than the full amount owed on the loan, the institution has an authoritative determination by an appropriate State official that in the opinion of the State official, the institution is an agency of the State and is, on that basis, under applicable State law, immune from suit.

(c) *Borrower's request for determination of dischargeability.* (1) The institution must use due diligence and may assert any defense consistent with its status under applicable law to avoid discharge of the loan. The institution must follow the procedures in this paragraph to respond to a complaint for a determination of dischargeability under 11 U.S.C. 523(a)(8) on the ground that repayment of the loan would impose an undue hardship on the borrower and his or her dependents, unless discharge would be more effectively opposed by avoiding that action.

(2) If the petition for relief in bankruptcy was filed before October 8, 1998 and more than seven years of the repayment period on the loan (excluding any applicable suspension of the repayment period defined in 34 CFR 682.402(m)) have passed before the borrower filed the petition, the institution may not oppose a determination of dischargeability requested under 11 U.S.C. 523(a)(8)(B) on the ground of undue hardship.

(3) In any other case, the institution must determine, on the basis of reasonably available information, whether repayment of the loan under either the current repayment schedule or any adjusted schedule authorized under subpart B or D of this part would impose an undue hardship on the borrower and his or her dependents.

(4) If the institution concludes that repayment would not impose an undue hardship, the institution shall determine whether the costs reasonably expected to be incurred to oppose discharge will exceed one-third of the total amount owed on the loan, including principal, interest, late charges and collection costs.

(5) If the expected costs of opposing discharge of such a loan do not exceed one-third of the total amount owed on the loan, the institution shall—

(i) Oppose the borrower's request for a determination of dischargeability; and

(ii) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(6) In opposing a request for a determination of dischargeability, the institution may compromise a portion of the amount owed on the loan if it reasonably determines that the compromise is necessary in order to obtain a judgment on the loan.

(d) *Request for determination of nondischargeability.* The institution may file a complaint for a determination that a loan obligation is not dischargeable and for judgment on the loan if the institution would have been required under paragraph (c) of this section to oppose a request for a determination of dischargeability with regard to that loan.

(e) *Chapter 13 repayment plan.* (1) The institution shall follow the procedures in this paragraph in response to a repayment plan proposed by a borrower who has filed for relief under chapter 13 of the Bankruptcy Code.

(2) The institution is not required to respond to a proposed repayment plan, if—

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the

institution shall determine from its own records and court documents—

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the chapter 13 case.

(ii) If the institution reasonably expects that costs of the appropriate actions will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307.

(4)(i) The institution must monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the institution determines that the debtor has not made the payments required under the plan, or has filed a request for a ''hardship discharge'' under 11 U.S.C. 1328(b), the institution must determine from its own records and information derived from documents filed with the court—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the ''hardship discharge'' by meeting the requirements of 11 U.S.C. 1328(b).

(ii) If the institution reasonably expects that costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will not exceed one-third of the dischargeable loan debt, the institution shall—

(A) Move to dismiss or convert a case where grounds can be established under 11 U.S.C. 1307; or

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(f) *Resumption of collection from the borrower*. The institution shall resume billing and collection action prescribed in this subpart after—

(1) The borrower's petition for relief in bankruptcy has been dismissed;

(2) The borrower has received a discharge under 11 U.S.C. 727, 11 U.S.C. 1141, or 11 U.S.C. 1228, unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any applicable suspension of the repayment period as defined by 34 CFR 682.402(m), and

(C) The loan is not excepted from discharge under other applicable provisions of the Code; or

(3) The borrower has received a discharge under 11 U.S.C. 1328(a) or 1328(b), unless—

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The petition for relief was filed before October 8, 1998;

(B) The loan entered the repayment period more than seven years (excluding any application suspension of the repayment period as defined by 34 CFR 682.402(m) before the filing of the petition; and

(C) The borrower's plan approved in the bankruptcy proceeding made some provision with regard to either the loan obligation or unsecured debts in general.

(g) *Termination of collection and write-off*. (1) An institution must terminate all collection action and write off a loan if it receives a general order of discharge—

(i) In a bankruptcy in which the borrower filed for relief before October 8, 1998, if the loan entered the repayment period more than seven years (exclusive of any applicable suspension of the repayment period defined by 34 CFR 682.402(m)) from the date on which a petition for relief was filed; or

(ii) In any other case, a judgment that repayment of the debt would constitute an undue hardship and that the debt is therefore dischargeable.

(2) If an institution receives a repayment from a borrower after a loan has been discharged, it must deposit that payment in its Fund.

(Approved by the Office of Management and Budget under control number 1845–0023)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32346, July 21, 1992; 59 FR 1652, Jan. 12, 1994; 59 FR 61412, Nov. 30, 1994; 64 FR 58313, Oct. 28, 1999; 65 FR 65614, Nov. 1, 2000]

§ 674.50 Assignment of defaulted loans to the United States.

(a) An institution may submit a defaulted loan note to the Secretary for assignment to the United States if—

(1) The institution has been unable to collect on the loan despite complying with the diligence procedures, including at least a first level collection effort as described in § 674.45(a) and litigation, if required under § 674.46(a), to the extent these actions were required by regulations in effect on the date the loan entered default;

(2) The amount of the borrower's account to be assigned, including outstanding principal, accrued interest, collection costs and late charges is $25.00 or greater; and

(3) The loan has been accelerated.

(b) An institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

(c) The Secretary may require an institution to submit the following documents for any loan it proposes to assign—

(1) An assignment form provided by the Secretary and executed by the institution, which must include a certification by the institution that it has complied with the requirements of this subpart, including at least a first level collection effort as described in § 674.45(a) in attempting collection on the loan.

(2) The original promissory note or a certified copy of the original note.

(3) A copy of the repayment schedule.

(4) A certified copy of any judgment order entered on the loan.

(5) A complete statement of the payment history.

(6) Copies of all approved requests for deferment and cancellation.

(7) A copy of the notice to the borrower of the effective date of acceleration and the total amount due on the loan.

(8) Documentation that the institution has withdrawn the loan from any firm that it employed for address search, billing, collection or litigation services, and has notified that firm to cease collection activity on the loans.

(9) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

(10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

(11) A record of disbursements for each loan made to a borrower on an MPN that shows the date and amount of each disbursement.

(12)(i) Upon the Secretary's request with respect to a particular loan or loans assigned to the Secretary and evidenced by an electronically signed promissory note, the institution that created the original electronically signed promissory note must cooperate with the Secretary in all activities necessary to enforce the loan or loans. Such institution must provide—

(A) An affidavit or certification regarding the creation and maintenance of the electronic records of the loan or loans in a form appropriate to ensure admissibility of the loan records in a legal proceeding. This affidavit or certification may be executed in a single record for multiple loans provided that this record is reliably associated with the specific loans to which it pertains; and

(B) Testimony by an authorized official or employee of the institution, if necessary, to ensure admission of the electronic records of the loan or loans in the litigation or legal proceeding to enforce the loan or loans.

(ii) The affidavit or certification in paragraph (c)(12)(i)(A) of this section must include, if requested by the Secretary—

(A) A description of the steps followed by a borrower to execute the promissory note (such as a flowchart);

(B) A copy of each screen as it would have appeared to the borrower of the loan or loans the Secretary is enforcing when the borrower signed the note electronically;

(C) A description of the field edits and other security measures used to ensure integrity of the data submitted to the originator electronically;

(D) A description of how the executed promissory note has been preserved to ensure that it has not been altered after it was executed;

(E) Documentation supporting the institution's authentication and electronic signature process; and

(F) All other documentary and technical evidence requested by the Secretary to support the validity or the authenticity of the electronically signed promissory note.

(iii) The Secretary may request a record, affidavit, certification or evidence under paragraph (a)(6) of this section as needed to resolve any factual dispute involving a loan that has been assigned to the Secretary including, but not limited to, a factual dispute raised in connection with litigation or any other legal proceeding, or as needed in connection with loans assigned to the Secretary that are included in a Title IV program audit sample, or for other similar purposes. The institution must respond to any request from the Secretary within 10 business days.

(iv) As long as any loan made to a borrower under a MPN created by an institution is not satisfied, the institution is responsible for ensuring that all parties entitled to access to the electronic loan record, including the Secretary, have full and complete access to the electronic loan record.

(d) Except as provided in paragraph (e) of this section, and subject to paragraph (g) of this section, the Secretary accepts an assignment of a note described in paragraph (a) of this section and submitted in accordance with paragraph (c) of this section.

(e) The Secretary does not accept assignment of a loan if—

(1) The institution has not provided the Social Security number of the borrower, unless the loan was made before September 13, 1982;

(2) The borrower has received a discharge in bankruptcy, unless—

(i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order; or

(3) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States.

(f)(1) The Secretary provides an institution written notice of the acceptance of the assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest of the institution in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(g)(1) The Secretary may determine that a loan assigned to the United States is unenforceable in whole or in part because of the acts or omissions of the institution or its agent. The Secretary may make this determination with or without a judicial determination regarding the enforceability of the loan.

(2) The Secretary may require the institution to reimburse the Fund for that portion of the outstanding balance on a loan assigned to the United States which the Secretary determines to be unenforceable because of an act or omission of that institution or its agent.

(3) Upon reimbursement to the Fund by the institution, the Secretary shall transfer all rights, title and interest of the United States in the loan to the institution for its own account.

(h) An institution shall consider a borrower whose loan has been assigned to the United States for collection to be in default on that loan for the purpose of eligibility for title IV financial assistance, until the borrower provides the institution confirmation from the

Secretary that he or she has made satisfactory arrangements to repay the loan.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32347, July 21, 1992; 57 FR 60707, Dec. 21, 1992; 59 FR 61412, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999; 65 FR 65614, Nov. 1, 2000; 67 FR 67077, Nov. 1, 2002; 72 FR 61997, Nov. 1, 2007; 78 FR 65805, Nov. 1, 2013]

Subpart D—Loan Cancellation

SOURCE: 52 FR 45758, Dec. 1, 1987, unless otherwise noted.

§ 674.51 Special definitions.

The following definitions apply to this subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Title I Children:* Children of ages 5 through 17 who are counted under section 1124(c)(1) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Child with a disability:* A child or youth from ages 3 through 21, inclusive, who requires special education and related services because he or she has one or more disabilities as defined in section 602(3) of the Individuals with Disabilities Education Act.

(e) *Community defender organizations:* A defender organization established in accordance with section 3006A(g)(2)(B) of title 18, United States Code.

(f) *Early intervention services:* Those services defined in section 632(4) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

(g) *Educational service agency:* A regional public multi-service agency authorized by State law to develop, manage, and provide services or programs to local educational agencies as defined in section 9101 of the Elementary and Secondary Education Act of 1965, as amended.

(h) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Secretary, if the school is not in a State.

(i) *Faculty member at a Tribal College or University:* An educator or tenured individual who is employed by a Tribal College or University, as that term is defined in section 316 of the HEA, to teach, research, or perform administrative functions. For purposes of this definition an educator may be an instructor, lecturer, lab faculty, assistant professor, associate professor, full professor, dean, or academic department head.

(j) *Federal public defender organization:* A defender organization established in accordance with section 3006A(g)(2)(A) of title 18, United States Code.

(k) *Firefighter:* A firefighter is an individual who is employed by a Federal, State, or local firefighting agency to extinguish destructive fires; or provide firefighting related services such as—

(1) Providing community disaster support and, as a first responder, providing emergency medical services;

(2) Conducting search and rescue; or

(3) Providing hazardous materials mitigation (HAZMAT).

(l) *Handicapped children:* Children of ages 3 through 21 inclusive who require special education and related services because they are—

(1) Individuals with intellectual disabilities;

(2) Hard of hearing;

(3) Deaf;

(4) Speech and language impaired;

(5) Visually handicapped;
(6) Seriously emotionally disturbed;
(7) Orthopedically impaired;
(8) Specific learning disabled; or
(9) Otherwise health impaired.

(m) *High-risk children:* Individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

(n) *Infant or toddler with a disability:* An infant or toddler from birth to age 2, inclusive, who needs early intervention services for specified reasons, as defined in section 632(5)(A) of the Individuals with Disabilities Education Act.

(o) *Librarian with a master's degree:* A librarian with a master's degree is an information professional trained in library or information science who has obtained a postgraduate academic degree in library science awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

(p) *Local educational agency:* (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(q) *Low-income communities:* Communities in which there is a high concentration of children eligible to be counted under title I of the Elementary and Secondary Education Act of 1965, as amended.

(r) *Medical technician:* An allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is certified, registered, or licensed by the appropriate State agency in the State in which he or she provides health care services. An allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system.

(s) *Nurse:* A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate State agency to provide nursing services.

(t) *Qualified professional provider of early intervention services:* A provider of services as defined in section 632 of the Individuals with Disabilities Education Act.

(u) *Secondary school:* (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(v) *Speech language pathologist with a master's degree:* An individual who evaluates or treats disorders that affect a person's speech, language, cognition, voice, swallowing and the rehabilitative or corrective treatment of physical or cognitive deficits/disorders resulting in difficulty with communication, swallowing, or both and has obtained a postgraduate academic degree awarded after the completion of an academic program of up to six years in duration, excluding a doctorate or professional degree.

(w) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(x) *Substantial gainful activity:* A level of work performed for pay or profit that involves doing significant physical or mental activities, or a combination of both.

(y) *Teacher:* (1) A teacher is a person who provides—

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech and language pathology and audiology;

(ii) Physical therapy;

(iii) Occupational therapy;

(iv) Psychological and counseling services; or

(v) Recreational therapy.

(z) *Teaching in a field of expertise:* The majority of classes taught are in the borrower's field of expertise.

(aa) *Total and permanent disability:* The condition of an individual who—

(1) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(i) Can be expected to result in death;

(ii) Has lasted for a continuous period of not less than 60 months; or

(iii) Can be expected to last for a continuous period of not less than 60 months; or

(2) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

(bb) *Tribal College or University:* An institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Education Land Grant Status Act of 1994 (7 U.S.C. 301 note).

[52 FR 45758, Dec. 1, 1987, as amended at 59 FR 61412, Nov. 30, 1994; 65 FR 65690, Nov. 1, 2000; 74 FR 55661, Oct. 28, 2009; 82 FR 31913, July 11, 2017]

§ 674.52 Cancellation procedures.

(a) *Application for cancellation.* To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b) *Part-time employment.* (1) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(2) An institution may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time. However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full-time for a full year.

(c) *Break in service.* (1) If the borrower is unable to complete an academic year of eligible teaching service due to a condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601, *et seq.*), the borrower still qualifies for the cancellation if—

(i) The borrower completes one half of the academic year; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract requirements for the academic year for purposes of salary increases, tenure, and retirement.

(2) If the borrower is unable to complete a year of eligible service under §§ 674.56, 674.57, 674.59, or 674.60 due to a condition that is covered under the FMLA, the borrower still qualifies for the cancellation if the borrower completes at least six consecutive months of eligible service.

(d) *Cancellation of a defaulted loan.* (1) Except with regard to cancellation on

account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated—

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for discharge on account of the death or disability of the borrower, or, if the borrower is the spouse of an eligible public servant as defined in § 674.64(a)(1), on account of the death or disability of the borrower's spouse, without regard to the repayment status of the loan.

(e) *Concurrent deferment period.* The Secretary considers a Perkins Loan, NDSL or Defense Loan borrower's loan deferment under § 674.34(c) to run concurrently with any period for which cancellation under §§ 674.53, 674.54, 674.55, 674.56, 674.57, 674.58, 674.59, and 674.60 is granted.

(2) For loans made on or after July 1, 1993, the Secretary considers a borrower's loan deferment under § 674.34 to run concurrently with any period for which a cancellation under §§ 674.53, 674.56, 674.57, or 674.58 is granted.

(f) *National community service.* No borrower who has received a benefit under subtitle D of title I of the National and Community Service Act of 1990 may receive a cancellation under this subpart.

(g) *Switching cancellation categories.* A borrower who qualifies for a cancellation under one of the cancellation categories in §§ 674.53, 674.56, 674.57, or 674.59 receives cancellation of 15 percent of the original principal for the first and second years of qualifying service, 20 percent of the original principal for the third and fourth years of qualifying service, and 30 percent of the original principal for the fifth year of qualifying service. If, after the first, second, third, or fourth complete year of qualifying service—

(1) The borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under §§ 674.53, 674.56, 674.57, or 674.59, the borrower's cancellation rate progression continues from the last year the borrower received a cancellation under the former cancellation category; or

(2) The borrower switches to a position that qualifies the borrower for cancellation under a different cancellation category under §§ 674.58 or 674.60, the borrower's cancellation rate progression under the new cancellation category begins at the year one cancellation rates specified in §§ 674.58(b) or 674.60(b), respectively.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 425, 1087ee)

[52 FR 45758, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61413, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997; 64 FR 58313, Oct. 28, 1999; 72 FR 55053, Sept. 28, 2007; 78 FR 65805, Nov. 1, 2013]

§ 674.53 Teacher cancellation—Federal Perkins, NDSL and Defense loans.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1)(i) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or an NDSL made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school.

(ii) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(iii) An institution must cancel up to 100 percent of the outstanding balance of a Federal Perkins, NDSL, or Defense loan for teaching service that includes August 14, 2008, or begins on or after that date, at an educational service agency.

(2) The borrower must be teaching full-time in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under part A of title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's or educational service agency's total enrollment is made up of title I children.

(3) For each academic year, the Secretary notifies participating institutions of the schools and educational service agencies selected under paragraph (a) of this section.

(4)(i) The Secretary selects schools and educational service agencies under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency must base its ranking of the schools and educational service agencies on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools and educational service agencies.

(5) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(6) A teacher, who performs service in a school or educational service agency that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school or educational service agency and will be eligible for loan cancellation pursuant to paragraph (a) of this section in subsequent years.

(7) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching in special education*. (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or NDSL loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for a borrower's service that includes August 14, 2008, or begins on or after that date, as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in an educational service agency.

(c) *Cancellation for full-time teaching in fields of expertise*. (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or NDSL made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the State education agency determines that there is a shortage of qualified teachers.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992, for teaching service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(d) *Cancellation rates*. (1) To qualify for cancellation under paragraph (a), (b), or (c) of this section, a borrower must teach full-time for a complete academic year or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of

the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(e) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system or an educational service agency only if the borrower is directly employed by the school system.

(f) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C 1087ee)

[59 FR 61413, Nov. 30, 1994, as amended at 64 FR 58313, Oct. 28, 1999; 74 FR 55662, Oct. 28, 2009]

§ 674.54 [Reserved]

§ 674.55 Teacher cancellation—Defense loans.

(a) *Cancellation for full-time teaching.* (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under title I of the Elementary and Secondary Education Act of 1965, as amended; and

(ii) Has been selected by the Secretary based on a determination that a high concentration of students enrolled at the school are from low-income families.

(2)(i) The Secretary selects schools under paragraph (b)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of title I children attending those schools.

(3) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(4) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (b) of this section.

(5) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(6) [Reserved]

(7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966–67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(3) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967–68.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

(Authority: 20 U.S.C. 425(b)(3))

[52 FR 45758, Dec. 1, 1987. Redesignated and amended at 59 FR 61413, 61414, Nov. 30, 1994]

§ 674.56 Employment cancellation—Federal Perkins, NDSL and Defense loans.

(a) *Cancellation for full-time employment as a nurse or medical technician.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992, for full-time service as a nurse or medical technician performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the borrower's promissory note.

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or NDSL made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing services directly and exclusively to high-risk children who are from low-income communities and the families of these children, or who is supervising the provision of services to high-risk children who are from low-income communities and the families of these children. To qualify for a child or family service cancellation, a non-supervisory employee of a child or family service agency must be providing services only to high-risk children from low-income communities and the families of these children. The employee must work directly with the high-risk children from low-income communities, and the services provided to the children's families must be secondary to the services provided to the children.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992, for employment in a child or family service agency on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 632 of the Individuals with Disabilities Education Act.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL or Defense loan made prior to July 23, 1992 for early intervention service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(d) *Cancellation for full-time employment as a firefighter to a local, State, or Federal fire department or fire district.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time firefighter.

(e) *Cancellation for full-time employment as a faculty member at a Tribal College or University.* An institution must

cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time faculty member at a Tribal College or University.

(f) *Cancellation for full-time employment as a librarian with a master's degree.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins Loan, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time librarian, provided that the individual—

(i) Is a librarian with a master's degree; and

(ii) Is employed in an elementary school or secondary school that is eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965, as amended; or

(iii) Is employed by a public library that serves a geographic area that contains one or more schools eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965, as amended.

(2) For the purposes of paragraph (f) of this section, the term *geographic area* is defined as the area served by the local school district.

(g) *Cancellation for full-time employment as a speech pathologist with a master's degree.* An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins Loan, NDSL, or Defense loan for full-time employment that includes August 14, 2008, or begins on or after that date, as a speech pathologist with a master's degree who is working exclusively with schools eligible for funds under part A of title I of the Elementary and Secondary Education Act of 1965, as amended.

(h) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), (c), (d), (e), (f), and (g) of this section, a borrower must work full-time for 12 consecutive months.

(2) [Reserved]

(Authority: 20 U.S.C. 1087ee)

[59 FR 61414, Nov. 30, 1994, as amended at 64 FR 58314, Oct. 28, 1999; 72 FR 61997, Nov. 1, 2007; 74 FR 55662, Oct. 28, 2009]

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins, NDSL, and Defense loans.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An institution must cancel up to 100 percent of the outstanding loan balance on a Federal Perkins, NDSL, or Defense loan made prior to November 29, 1990, for law enforcement or correction officer service performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) An eligible employing agency is an agency—

(i) That is a local, State, or Federal law enforcement or corrections agency;

(ii) That is publicly-funded; and

(iii) The principal activities of which pertain to crime prevention, control, or reduction or the enforcement of the criminal law.

(4) Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible employing agencies.

(5) A borrower qualifies for cancellation under this section only if the borrower is—

(i) A sworn law enforcement or corrections officer; or

(ii) A person whose principal responsibilities are unique to the criminal justice system.

(6) To qualify for a cancellation under this section, the borrower's service must be essential in the performance of the eligible employing agency's primary mission.

(7) The agency must be able to document the employee's functions.

(8) A borrower whose principal official responsibilities are administrative or supportive does not qualify for cancellation under this section.

(b) An institution must cancel up to 100 percent of the outstanding balance of a borrower's Federal Perkins, NDSL, or Defense loan for service that includes August 14, 2008, or begins on or after that date, as a full-time attorney

employed in Federal public defender organizations or community defender organizations, established in accordance with section 3006A(g)(2) of title 18, U.S.C.

(c)(1) To qualify for cancellation under paragraph (a) of this section, a borrower must work full-time for 12 consecutive months.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time employment;

(ii) 20 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time employment; and

(iii) 30 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time employment.

(Authority: 20 U.S.C. 1087ee)

[74 FR 55663, Oct. 28, 2009]

§ 674.58 Cancellation for service in an early childhood education program.

(a)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's NDSL or Federal Perkins loan, for service as a full-time staff member in a Head Start program.

(2) An institution must cancel up to 100 percent of the outstanding balance on a Defense loan for service as a full-time staff member in a Head Start program performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(3) An institution must cancel up to 100 percent of the outstanding balance of a borrower's NDSL, Defense, or Federal Perkins loan for service that includes August 14, 2008, or begins on or after that date, as a full-time staff member of a pre-kindergarten or childcare program that is licensed or regulated by the State.

(4) The Head Start, pre-kindergarten or child care program in which the borrower serves must operate for a complete academic year, or its equivalent.

(5) In order to qualify for cancellation, the borrower's salary may not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start, pre-kindergarten or child care program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) ''Head Start'' is a preschool program carried out under the Head Start Act (subchapter B, chapter 8 of title VI of Pub. L. 97–35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a) (1))

(2) A pre-kindergarten program is a State-funded program that serves children from birth through age six and addresses the children's cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development.

(3) A child care program is a program that is licensed or regulated by the State and provides child care services for fewer than 24 hours per day per child, unless care in excess of 24 consecutive hours is needed due to the nature of the parents' work.

(4) ''Full-time staff member'' is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start, pre-kindergarten or child care program.

(Authority: 20 U.S.C. 425)

[52 FR 45758, Dec. 1, 1987. Redesignated and amended at 59 FR 61413, 61415, Nov. 30, 1994; 64 FR 58314, Oct. 28, 1999; 74 FR 55663, Oct. 28, 2009]

§ 674.59 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution must cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) *Cancellation of an NDSL or Perkins loan.* (1) An institution must cancel up to 50 percent of the outstanding balance on an NDSL or Perkins loan for active duty service that ended before August 14, 2008, as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

(c)(1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or NDSL loan for a borrower's full year of active duty service that includes August 14, 2008, or begins on or after that date, as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

(2) The cancellation rate is 15 percent for the first and second year of qualifying service, 20 percent for the third and fourth year of qualifying service, and 30 percent for the fifth year of qualifying service.

(d) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(Authority:20 U.S.C. 1087ee)

[52 FR 45758, Dec. 1, 1987. Redesignated at 59 FR 61413, Nov. 30, 1994; 74 FR 55664, Oct. 28, 2009]

§ 674.60 Cancellation for volunteer service—Perkins loans, NDSLs and Defense loans.

(a)(1) An institution must cancel up to 70 percent of the outstanding balance on a Perkins loan, and 70 percent of the outstanding balance of an NDSL made on or after October 7, 1998, for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) An institution must cancel up to 70 percent of the outstanding balance on an NDSL or Defense loan for service as a volunteer under The Peace Corps Act or The Domestic Volunteer Service Act of 1973 (ACTION programs) performed on or after October 7, 1998, if the cancellation benefits provided under this section are not included in the terms of the borrower's promissory note.

(b) Cancellation rates are—

(1) Fifteen percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

(Authority: 20 U.S.C. 1087ee)

[52 FR 45758, Dec. 1, 1987, as amended at 57 FR 32347, July 21, 1992. Redesignated at 59 FR 61413, Nov. 30, 1994, as amended at 64 FR 58314, Oct. 28, 1999]

§ 674.61 Discharge for death or disability.

(a) *Death.* (1) An institution must discharge the unpaid balance of a borrower's Defense, NDSL, or Federal Perkins loan, including interest, if the borrower dies. The institution must discharge the loan on the basis of—

(i) An original or certified copy of the death certificate;

(ii) An accurate and complete photocopy of the original or certified copy of the death certificate;

(iii) An accurate and complete original or certified copy of the death certificate that is scanned and submitted electronically or sent by facsimile transmission; or

(iv) Verification of the borrower's death through an authoritative Federal or State electronic database approved for use by the Secretary.

(2) Under exceptional circumstances and on a case-by-case basis, the chief financial officer of the institution may approve a discharge based upon other reliable documentation of the borrower's death.

(b) *Total and permanent disability as defined in § 674.51(aa)(1).* (1) *General.* (i) A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 674.51(aa)(1), and satisfies the additional eligibility requirements in this section.

(ii) For purposes of paragraph (b) of this section, a borrower's representative or a veteran's representative is a member of the borrower's family, the borrower's attorney, or another individual authorized to act on behalf of the borrower in connection with the borrower's total and permanent disability discharge application. References to a ''borrower'' or a ''veteran'' include, if applicable, the borrower's representative or the veteran's representative for purposes of applying for a total and permanent disability discharge, providing notifications or information to the Secretary, and receiving notifications from the Secretary.

(2) *Discharge application process for borrowers who have a total and permanent disability as defined in § 674.51(aa)(1).* (i) If the borrower notifies the institution that the borrower claims to be totally and permanently disabled as defined in § 674.51(aa)(1), the institution must direct the borrower to notify the Secretary of the borrower's intent to submit an application for total and permanent disability discharge and provide the borrower with the information needed for the borrower to notify Secretary.

(ii) If the borrower notifies the Secretary of the borrower's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the borrower with information needed for the borrower to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the borrower and notifies the lenders of the borrower's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the borrower that the suspension of collection activity described in paragraph (b)(2)(ii)(C) of this section will end after 120 days and the collection will resume on the loans if the borrower does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the borrower fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the borrower's title IV loans.

(iv) The borrower must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary. The application must contain—

(A) A certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1); or

(B) A Social Security Administration (SSA) notice of award for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits indicating that the borrower's next scheduled disability review will be within five to seven years.

(v) The borrower must submit the application described in paragraph (b)(2)(iv) of this section to the Secretary within 90 days of the date the physician certifies the application, if applicable.

(vi) After the Secretary receives the application described in paragraph (b)(2)(iv) of this section, the Secretary notifies the holders of the borrower's title IV loans that the Secretary has received a total and permanent disability discharge application from the borrower.

(vii) If the application is incomplete, the Secretary notifies the borrower of the missing information and requests the missing information from the borrower, the borrower's representative,

or the physician who provided the certification, as appropriate. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (b)(2)(vi) of this section directs the borrower's loan holders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives a disability discharge application, the Secretary sends a notice to the borrower that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the borrower that the borrower's lenders will suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans while the Secretary reviews the borrower's application for discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the borrower's completed application, the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits supports the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the borrower is considered totally and permanently disabled as of the date—

(A) The physician certified the borrower's application; or

(B) The Secretary received the SSA notice of award for SSDI or SSI benefits.

(ii) The Secretary may require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1). As part of the Secretary's review of the borrower's discharge application, the Secretary may require and arrange for an additional review of the borrower's condition by an independent physician at no expense to the borrower.

(iii) After determining that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the borrower's lenders that the application for a disability discharge has been approved. With this notification, the Secretary provides the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits and directs each institution holding a Defense, NDSL, or Perkins Loan made to the borrower to assign the loan to the Secretary.

(iv) The institution must assign the loan to the Secretary within 45 days of the date of the notice described in paragraph (b)(3)(iii) of this section.

(v) After the loan is assigned, the Secretary discharges the borrower's obligation to make further payments on the loan and notifies the borrower and the institution that the loan has been discharged. The notification to the borrower explains the terms and conditions under which the borrower's obligation to repay the loan will be reinstated, as specified in paragraph (b)(6) of this section. Any payments received after the date the physician certified the borrower's loan discharge application or the date the Secretary received the SSA notice of award for SSDI or SSI benefits are returned to the person who made the payments on the loan in accordance with paragraph (b)(8) of this section.

(vi) If the Secretary determines that the physician's certification or the SSA notice of award for SSDI or SSI benefits provided by the borrower does not support the conclusion that the borrower is totally and permanently disabled as defined in § 674.51(aa)(1), the Secretary notifies the borrower and the institution that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) A statement that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) A statement that the institution will notify the borrower of the date the borrower must resume making payments on the loan;

(D) An explanation that the borrower is not required to submit a new total and permanent disability discharge application if the borrower requests that the Secretary re-evaluate the application for discharge by providing, within 12 months of the date of the notification, additional information that supports the borrower's eligibility for discharge; and

(E) An explanation that if the borrower does not request re-evaluation of the borrower's prior discharge application within 12 months of the date of the notification, the borrower must submit a new total and permanent disability discharge application to the Secretary if the borrower wishes the Secretary to re-evaluate the borrower's eligibility for a total and permanent disability discharge.

(vii) If the borrower requests re-evaluation in accordance with paragraph (b)(3)(vi)(D) of this section or submits a new total and permanent disability discharge application in accordance with paragraph (b)(3)(vi)(E) of this section, the request must include new information regarding the borrower's disabling condition that was not provided to the Secretary in connection with the prior application at the time the Secretary reviewed the borrower's initial application for a total and permanent disability discharge.

(4) *Treatment of disbursements made during the period from the date of the physician's certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits until the date of discharge.* If a borrower received a title IV loan or TEACH Grant before the date the physician certified the borrower's discharge application or before the date the Secretary received the SSA notice of award for SSDI or SSI benefits and a disbursement of that loan or grant is made during the period from the date of the physician's certification or the date the Secretary received the SSA notice of award for SSDI or SSI benefits until the date the Secretary grants a discharge under this section, the processing of the borrower's loan discharge application will be suspended until the borrower ensures that the full amount of the disbursement has been returned to the loan holder or to the Secretary, as applicable.

(5) *Receipt of new title IV loans or TEACH Grants after the date of the physician's certification or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits.* If a borrower receives a disbursement of a new title IV loan or receives a new TEACH Grant made on or after the date the physician certified the borrower's discharge application or on or after the date the Secretary received the SSA notice of award for SSDI or SSI benefits and before the date the Secretary grants a discharge under this section, the Secretary denies the borrower's discharge request and collection resumes on the borrower's loans.

(6) *Conditions for reinstatement of a loan after a total and permanent disability discharge.* (i) The Secretary reinstates the borrower's obligation to repay a loan that was discharged in accordance with paragraph (b)(3)(v) of this section if, within three years after the date the Secretary granted the discharge, the borrower—

(A) Has annual earnings from employment that exceed 100 percent of the poverty guideline for a family of two, as published annually by the United States Department of Health and Human Services pursuant to 42 U.S.C. 9902(2);

(B) Receives a new TEACH Grant or a new loan under the Perkins or Direct Loan programs, except for a Direct Consolidation Loan that includes loans that were not discharged;

(C) Fails to ensure that the full amount of any disbursement of a title IV loan or TEACH Grant received prior to the discharge date that is made is returned to the loan holder or to the Secretary, as applicable, within 120 days of the disbursement date; or

(D) Receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(ii) If the borrower's obligation to repay a loan is reinstated, the Secretary—

(A) Notifies the borrower that the borrower's obligation to repay the loan has been reinstated;

(B) Returns the loan to the status that would have existed had the total and permanent disability discharge application not been received; and

(C) Does not require the borrower to pay interest on the loan for the period from the date the loan was discharged until the date the borrower's obligation to repay the loan was reinstated.

(iii) The Secretary's notification under paragraph (b)(6)(ii)(A) of this section will include—

(A) The reason or reasons for the reinstatement;

(B) An explanation that the first payment due date on the loan following reinstatement will be no earlier than 60 days after the date of the notification of reinstatement; and

(C) Information on how the borrower may contact the Secretary if the borrower has questions about the reinstatement or believes that the obligation to repay the loan was reinstated based on incorrect information.

(7) *Borrower's responsibilities after a total and permanent disability discharge.* During the three-year period described in paragraph (b)(6)(i) of this section, the borrower must—

(i) Promptly notify the Secretary of any changes in the borrower's address or phone number;

(ii) Promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(6)(i)(A) of this section;

(iii) Provide the Secretary, upon request, with documentation of the borrower's annual earnings from employment on a form approved by the Secretary; and

(iv) Promptly notify the Secretary if the borrower receives a notice from the SSA indicating that the borrower is no longer disabled or that the borrower's continuing disability review will no longer be the five- to seven-year period indicated in the SSA notice of award for SSDI or SSI benefits.

(8) *Payments received after the physician's certification of total and permanent disability.* (i) If the institution receives any payments from or on behalf of the borrower on or attributable to a loan that has been assigned to the Secretary based on the Secretary's determination of eligibility for a total and permanent disability discharge, the institution must return the payments to the sender.

(ii) At the same time that the institution returns the payments, it must notify the borrower that there is no obligation to make payments on the loan after it has been discharged due to a total and permanent disability unless the loan is reinstated in accordance with § 674.61(b)(6), or the Secretary directs the borrower otherwise.

(iii) When the Secretary discharges the loan, the Secretary returns to the sender any payments received on the loan after the date the borrower became totally and permanently disabled.

(c) *Total and permanent disability discharges for veterans.* (1) *General.* A veteran's Defense, NDSL, or Perkins loan will be discharged if the veteran is totally and permanently disabled, as defined in § 674.51(aa)(2).

(2) *Discharge application process for veterans who have a total and permanent disability as defined in § 674.51(aa)(2).* (i) If a veteran notifies the institution that the veteran claims to be totally and permanently disabled as defined in § 674.51(aa)(2), the institution must direct the veteran to notify the Secretary of the veteran's intent to submit an application for a total and permanent disability discharge to the Secretary; and provide the veteran with the information needed for the veteran to apply for a total and permanent disability discharge to the Secretary.

(ii) If the veteran notifies the Secretary of the veteran's intent to apply for a total and permanent disability discharge, the Secretary—

(A) Provides the veteran with information needed for the veteran to apply for a total and permanent disability discharge;

(B) Identifies all title IV loans owed by the veteran and notifies the lenders of the veteran's intent to apply for a total and permanent disability discharge;

(C) Directs the lenders to suspend efforts to collect from the borrower for a period not to exceed 120 days; and

(D) Informs the veteran that the suspension of collection activity described in paragraph (c)(2)(ii)(C) of this section will end after 120 days and collection will resume on the veteran's title IV loans if the veteran does not submit a total and permanent disability discharge application to the Secretary within that time.

(iii) If the veteran fails to submit an application for a total and permanent disability discharge to the Secretary within 120 days, collection resumes on the veteran's title IV loans.

(iv) The veteran must submit to the Secretary an application for total and permanent disability discharge on a form approved by the Secretary.

(v) The application must be accompanied by documentation from the Department of Veteran Affairs showing that the Department of Veteran Affairs has determined that the veteran is unemployable due to a service-connected disability. The veteran will not be required to provide any additional documentation related to the veteran's disability.

(vi) After the Secretary receives the application and supporting documentation described in paragraphs (c)(2)(iv) and (c)(2)(v) of this section, the Secretary notifies the holders of the veteran's title IV loans that the Secretary has received a total and permanent disability discharge application from the veteran.

(vii) If the application is incomplete, the Secretary notifies the veteran of the missing information and requests the missing information from the veteran or the veteran's representative. The Secretary does not make a determination of eligibility until the application is complete.

(viii) The lender notification described in paragraph (c)(2)(vi) of this section directs the lenders to suspend collection activity or maintain the suspension of collection activity on the borrower's title IV loans.

(ix) After the Secretary receives the disability discharge application, the Secretary sends a notice to the veteran that—

(A) States that the application will be reviewed by the Secretary;

(B) Informs the veteran that the veteran's lenders will suspend collection activity on the veteran's title IV loans while the Secretary reviews the borrower's application for a discharge; and

(C) Explains the process for the Secretary's review of total and permanent disability discharge applications.

(3) *Secretary's review of the total and permanent disability discharge application.* (i) If, after reviewing the veteran's completed application, the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the veteran and the veteran's lenders that the application for disability discharge has been approved. With this notification, the Secretary provides the effective date of the determination and directs each institution holding a Direct, NDSL, or Perkins Loan made to the veteran to discharge the loan.

(ii) The institution returns any payments received on or after the effective date of the determination by the Department of Veterans Affairs that the veteran is unemployable due to a service-connected disability to the person who made the payments.

(iii) If the Secretary determines, based on a review of the documentation from the Department of Veterans Affairs, that the veteran is not totally and permanently disabled as defined in § 674.51(aa)(2), the Secretary notifies the veteran or the veteran's representative, and the institution that the application for a disability discharge has been denied. The notification includes—

(A) The reason or reasons for the denial;

(B) An explanation that the loan is due and payable to the institution under the terms of the promissory note and that the loan will return to the status that would have existed had the total and permanent disability discharge application not been received;

(C) An explanation that the institution will notify the veteran of the date the veteran must resume making payments on the loan;

(D) An explanation that the veteran is not required to submit a new total and permanent disability discharge application if the veteran requests that the Secretary re-evaluate the veteran's application for discharge by providing, within 12 months of the date of the notification, additional documentation from the Department of Veterans Affairs that supports the veteran's eligibility for discharge; and

(E) Information on how the veteran may reapply for a total and permanent disability discharge in accordance with the procedures described in paragraphs (b)(1) through (b)(8) of this section, if the documentation from the Department of Veterans Affairs does not indicate that the veteran is totally and permanently disabled as defined in § 674.51(aa)(2), but indicates that the veteran may be totally and permanently disabled as defined in § 674.51(aa)(1).

(d) *No Federal reimbursement.* No Federal reimbursement is made to an institution for discharge of loans due to death or disability.

(e) *Retroactive.* Discharge for death applies retroactively to all Defense, NDSL, and Perkins loans.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 425, 1070g, 1087dd; sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94–482)

[52 FR 45758, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988. Redesignated and amended at 59 FR 61413, 61415, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999; 65 FR 65690, Nov. 1, 2000; 66 FR 44007, Aug. 21, 2001; 72 FR 61998, Nov. 1, 2007; 73 FR 35494, June 23, 2008; 73 FR 36793, June 30, 2008; 74 FR 55664, Oct. 28, 2009; 74 FR 55987, Oct. 29, 2009; 77 FR 66125, Nov. 1, 2012; 81 FR 76078, Nov. 1, 2016]

§ 674.62 No cancellation for prior service—no repayment refunded.

(a) No portion of a loan may be cancelled for teaching. Head Start, volunteer or military service if the borrower's service is performed—

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error.

(Authority: 20 U.S.C. 425 and 1067ee)

[52 FR 45758, Dec. 1, 1987. Redesignated at 59 FR 61413, Nov. 30, 1994]

§ 674.63 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest canceled under §§ 674.55 and 674.59(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for NDSL and Federal Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest canceled from its student loan fund under §§ 674.53, 674.54, 674.56, 674.57, 674.58, 674.59(b), and 674.60. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

[52 FR 45758, Dec. 1, 1987. Redesignated and amended at 59 FR 61413, 61415, Nov. 30, 1994]

§ 674.64 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in

Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes.

(3) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 72 hours of the injury having been sustained or within 72 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(4) *Immediate aftermath* means, for an eligible public servant, the period of time from the aircraft crashes until 96 hours after the crashes.

(5) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes;

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons; or

(iii) On board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(b) *September 11 survivors discharge.* (1) The obligation of a borrower to make any further payments on an eligible Defense, NDSL, or Perkins Loan is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) A Defense, NDSL, or Perkins Loan owed by the spouse of an eligible public servant may be discharged under the procedures for a discharge in paragraphs (b)(3) through (b)(6) of this section.

(3) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, an institution shall suspend collection activity on the borrower's eligible Defense, NDSL, and Perkins Loans and promptly request that the borrower submit a request for discharge on a form approved by the Secretary.

(4) If the institution determines that the borrower does not qualify for a discharge under this section, or the institution does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the institution that the borrower claims to qualify for a discharge, the institution shall resume collection

and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the institution was notified by the borrower. The institution must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the institution will resume collection on the loan.

(5) If the institution determines that the borrower qualifies for a discharge under this section, the institution shall notify the borrower that the loan has been discharged and that there is no further obligation to repay the loan. The institution shall return to the sender any payments received by the institution after the date the loan was discharged.

(6) A Defense, NDSL, or Perkins Loan owed by an eligible public servant may be discharged under the procedures in § 674.61 for a discharge based on the death or total and permanent disability of the eligible public servant.

(c) *Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (c)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the eligible public servant owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a FFEL Program Loan, a Direct Loan, or a Perkins Loan held by another institution, because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation required in paragraphs (c)(1) through (c)(3) of this section.

(5) Under exceptional circumstances and on a case-by-case basis, the determination that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 may be based on other reliable documentation approved by the chief financial officer of the institution.

(d) *Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a FFEL Loan, a Direct Loan, or a Perkins Loan held by another institution, because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation required in paragraph (d)(1) of this section.

(e) *Additional information.* (1) An institution may require the borrower to submit additional information that the institution deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's employer; or

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant at the site.

(3) To establish that the disability of the eligible public servant is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint FFEL or Federal Direct Consolidation loan applications.

(f) *Limitations on discharge.* (1) Only outstanding Defense, NDSL, and Perkins Loans for which amounts were owed on September 11, 2001, are eligible for discharge under this section.

(2) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's Defense, NDSL, or Perkins Loans prior to the date the loan was discharged.

(3) A determination by an institution that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant for a discharge based on a total and permanent disability under § 674.61.

(4) The spouse of an eligible public servant may not receive a discharge under this section if the eligible public servant has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

[71 FR 78078, Dec. 28, 2006, as amended at 72 FR 55053, Sept. 28, 2007]

APPENDIXES A–D TO PART 674
[RESERVED]

APPENDIX E TO PART 674—EXAMPLES FOR COMPUTING MAXIMUM PENALTY CHARGES (6 MONTHS UNPAID OVERDUE PAYMENTS) ON DIRECT LOANS MADE FOR PERIODS OF ENROLLMENT BEFORE JANUARY 1, 1986

Monthly repayment schedule	Installment due dates—Missed payments						Separate monthly maximum penalty charges
	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	
1st Past due installment	$1						$1
2nd Past due installment		$1 + $2					3
3rd Past due installment			$3 + $2				5
4th Past due installment				$5 + $2			7
5th Past due installment					$7 + $2		9
6th Past due installment						$9 + $2	11
Cumulative maximum subtotals	1	4	9	16	25	36	

Bimonthly repayment schedule	Installment due dates—Missed payments			Separate bimonthly maximum penalty charges
	Jan. 2	Mar. 2	May 2	
1st Past due installment	$3			$3
2nd Past due installment		$3 + $3		6
3rd Past due installment			$6 + $3	9
Cumulative maximum subtotals	3	9	18	

Quarterly repayment schedule	Installment due dates—Missed payments		Separate quarterly maximum penalty charges
	Jan. 2	Apr. 2	
1st Past due installment	$6		$6
2nd Past due installment		$6 + $6	12
Cumulative maximum subtotals	6	18	

NOTE. In the above table of examples, the Cumulative Maximum Subtotal line contains the maximum penalty charges that can be assessed on an NDSL borrower for any given installment that was missed on its due date. For example, if three borrowers, all on different repayment schedules, owed and missed their first installment payment on January 2 and all three made their next payment on April 10, the maximum penalty charges that could be assessed each individual borrower would be as follows: $16 to the monthly repayment schedule borrower; $9 to the bimonthly repayment schedule borrower; and $18 to the quarterly repayment schedule borrower.

[46 FR 5241, Jan. 19, 1981]

PART 675—FEDERAL WORK-STUDY PROGRAMS

NOTE: An asterisk (*) indicates provisions that are common to parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

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APPENDIX A TO PART 675 [RESERVED]

AUTHORITY: 20 U.S.C. 1070g, 1094; 42 U.S.C. 2751–2756b; unless otherwise noted

SOURCE: 52 FR 45770, Dec. 1, 1987, unless otherwise noted.

Subpart A—Federal Work-Study Program

§ 675.1 Purpose and identification of common provisions.

(a) The Federal Work-Study (FWS) program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education and encourages students receiving FWS assistance to participate in community service activities.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 42 U.S.C. 2751–2756b)

[52 FR 45770, Dec. 1, 1987, as amended at 59 FR 61416, Nov. 30, 1994]

§ 675.2 Definitions.

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

Academic Competitiveness Grant (ACG) Program
Academic year
Award year
Clock hour
Enrolled
Expected family contribution (EFC)
Federal Family Education Loan (FFEL)
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal SLS Program
Federal Supplemental Educational Opportunity Grant (FSEOG) Program
Full-time student
HEA
National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program
Secretary
Teacher Education Assistance for College and Higher Education (TEACH) Grant Program
TEACH Grant

(b) The Secretary defines other terms used in this part as follows:

Community services: Services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs. These services include—

(1) Such fields as health care, child care (including child care services provided on campus that are open and accessible to the community), literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, emergency preparedness and response, crime prevention and control, recreation, rural development, and community improvement;

(2) Work in service opportunities or youth corps as defined in section 101 of the National and Community Service Act of 1990, and service in the agencies, institutions and activities designated in section 124(a) of that Act;

(3) Support services to students with disabilities, including students with disabilities who are enrolled at the institution; and

(4) Activities in which a student serves as a mentor for such purposes as—

(i) Tutoring;

(ii) Supporting educational and recreational activities; and

(iii) Counseling, including career counseling.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

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

**Institution of higher education (institution).* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

**Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

Nonprofit organization: An organization owned and operated by one or more nonprofit corporations or associations where no part of the organization's net earnings benefits, or may lawfully benefit, any private shareholder or entity. An organization may show that it is nonprofit by meeting the provisions of §75.51 of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.51.

(Authority: 20 U.S.C. 1141(c))

Student services: Services that are offered to students that may include, but are not limited to, financial aid, library, peer guidance counseling, job placement, assisting an instructor with curriculum-related activities, security, and social, health, and tutorial services. Student services do not have to be direct or involve personal interaction with students. For purposes of this definition, facility maintenance, cleaning, purchasing, and public relations are never considered student services.

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

(Authority: 20 U.S.C. 1070g, 1087aa–1087ii)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 52581, Dec. 28, 1988; 57 FR 32356, July 21, 1992; 57 FR 60707, Dec. 21, 1992; 59 FR 61416, 61419, Nov. 30, 1994; 60 FR 61815, Dec. 1, 1995; 61 FR 60608, Nov. 29, 1996; 64 FR 58292, Oct. 28, 1999; 67 FR 67078, Nov. 1, 2002; 69 FR 12276, Mar. 16, 2004; 71 FR 38003, July 3, 2006; 73 FR 35494, June 23, 2008; 74 FR 55948, Oct. 29, 2009]

§§ 675.3–675.7 [Reserved]

§ 675.8 Program participation agreement.

To participate in the FWS program, an institution of higher education shall enter into a participation agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the FWS program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR part 668;

(c) Make employment under the FWS program reasonably available, to the extent of available funds, to all eligible students;

(d) Award FWS employment, to the maximum extent practicable, that will complement and reinforce each recipient's educational program or career goals;

(e) Assure that employment under this part may be used to support programs for supportive services to students with disabilities; and

(f) Inform all eligible students of the opportunity to perform community services and consult with local nonprofit, governmental, and community-based organizations to identify those opportunities.

(Authority: 20 U.S.C. 1094, 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 59 FR 61416, 61419, Nov. 30, 1994; 64 FR 58292, Oct. 28, 1999]

§ 675.9 Student eligibility.

A student at an institution of higher education is eligible to receive part-time employment under the FWS program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution; and

(c) Has financial need as determined in accordance with part F of title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1091; 42 U.S.C. 2752–2753)

[52 FR 45770, Dec. 1, 1987, as amended at 59 FR 61419, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997]

§ 675.10 Selection of students for FWS employment.

(a) An institution shall make employment under FWS reasonably available, to the extent of available funds, to all eligible students.

(b) An institution shall establish selection procedures and those procedures must be—

(1) Uniformly applied;

(2) In writing; and

(3) Maintained in the institution's files.

(c) *Part-time and independent students.* If an institution's allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2752–2753)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61416, 61419, Nov. 30, 1994; 64 FR 58292, Oct. 28, 1999]

§§ 675.11–675.15 [Reserved]

§ 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 occurred on the account.

(d) *Student authorizations.* (1) Except for the noncash contributions allowed under paragraph (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)

[74 FR 55948, Oct. 29, 2009]

§ 675.17 [Reserved]

§ 675.18 Use of funds.

(a) *General.* An institution may use its FWS allocation only for—

(1) Paying the Federal share of FWS wages;

(2) Paying administrative expenses as provided for in 34 CFR 673.7;

(3) Meeting the cost of a Work-Colleges program under subpart C;

(4) Meeting the cost of a Job Location and Development program under subpart B; and

(5) Transferring a portion of its FWS allocation to its FSEOG program as described in paragraph (f) of this section.

(b) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental FWS allocations for the current award year.

(2) Before an institution may spend its current year FWS allocation, it shall spend any funds carried forward from the previous year.

(c) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental FWS allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(d) The institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(e) *Transfer funds to SEOG.* (1) Beginning with the 1993–94 award year, an institution may transfer up to 25 percent of the sum of its initial and supplemental FWS allocations for an award year to its FSEOG program.

(2) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under § 675.19(b).

(f) *Carry back funds for summer employment.* An institution may carry back and expend in the previous award year any portion of its initial and supplemental FWS allocations for the current award year to pay student wages earned on or after May 1 of the previous award year but prior to the beginning of the current award year.

(g) *Community service.* (1) For the 2000–2001 award year and subsequent award years, an institution must use at least seven percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities. In meeting this community service requirement, an institution must include at least one—

(i) Reading tutoring project that employs one or more FWS students as reading tutors for children who are preschool age or are in elementary school; or

(ii) Family literacy project that employs one or more FWS students in family literacy activities.

(2) The Secretary may waive the requirements in paragraph (g)(1) of this section if the Secretary determines that an institution has demonstrated

that enforcing the requirements in paragraph (g)(1) of this section would cause a hardship for students at the institution.

(3) To the extent practicable, in providing reading tutors for children under paragraph (g)(1)(i), an institution must—

(i) Give priority to the employment of students to tutor in reading in schools that are participating in a reading reform project that—

(A) Is designed to train teachers how to teach reading on the basis of scientifically-based research on reading; and

(B) Is funded under the Elementary and Secondary Education Act of 1965; and

(ii) Ensure that any student who is employed in a school participating in a reading reform project described in paragraph (g)(3)(i) of this section receives training from the employing school in the instructional practices used by the school.

(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.

(h) *Payment for time spent in training and travel.* (1) For any award year, an institution may pay students for a reasonable amount of time spent for training that is directly related to FWS employment.

(2) Beginning with the 1999–2000 award year, an institution may pay students for a reasonable amount of time spent for travel that is directly related to employment in community service activities (including tutoring in reading and family literacy activities).

(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, 2756b)

[52 FR 45770, Dec. 1, 1987, as amended at 57 FR 32356, July 21, 1992; 59 FR 61417, 61419, Nov. 30, 1994; 61 FR 60396, Nov. 27, 1996; 64 FR 58293, Oct. 28, 1999; 74 FR 55949, Oct. 29, 2009]

§ 675.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its FWS program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3) An institution shall maintain funds received under this part in accordance with the requirements in § 668.163.

(b) *Records and reporting.* (1) An institution must follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) The institution must also establish and maintain program and fiscal records that—

(i) Include a certification by the student's supervisor, an official of the institution or off-campus agency, that each student has worked and earned the amount being paid. The certification must include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.27(a)); and

(iv) Are reconciled at least monthly.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(Approved by the Office of Management and Budget under control number 1845–0535)

(Authority: 42 U.S.C. 2753 and 20 U.S.C. 1094 and 1232f)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 30183, Aug. 10, 1988; 53 FR 49147, Dec. 6, 1988; 59 FR 61419, Nov. 30, 1994; 59 FR 61722, Dec. 1, 1994; 60 FR 61815, Dec. 1, 1995; 61 FR 60492, Nov. 27, 1996; 62 FR 50848, Sept. 26, 1997; 65 FR 65676, Nov. 1, 2000]

§ 675.20 Eligible employers and general conditions and limitation on employment.

(a) *Eligible FWS employers.* A student may be employed under the FWS program by—

(1) The institution in which the student is enrolled;

(2) A Federal, State, or local public agency;

(3) A private nonprofit organization; or

(4) A private for-profit organization.

(b) *Agreement between institution and organization.* (1) If an institution wishes to have its students employed under this part by a Federal, State or local public agency, or a private nonprofit or for-profit organization, it shall enter into a written agreement with that agency or organization. The agreement must set forth the FWS work conditions. The agreement must indicate whether the institution or the agency or organization shall pay the students employed, except that the agreement between an institution and a for-profit organization must require the employer to pay the non-Federal share of the student earnings.

(2) The institution may enter into an agreement with an agency or organization that has professional direction and staff.

(3) The institution is responsible for ensuring that—

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised.

(4) The agreement between the institution and the employing agency or nonprofit organization may require the employer to pay—

(i) The non-Federal share of the student earnings; and

(ii) Required employer costs such as the employer's share of social security or workers' compensation.

(c) *FWS general employment conditions and limitation.* (1) Regardless of the student's employer, the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) FWS employment may not—

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) Involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; or

(v) Include employment for the U.S. Department of Education.

(d) *Academic credit and work-study*. (1) A student may be employed under the FWS program and also receive academic credit for the work performed. Those jobs include, but are not limited to, work performed when the student is—

(i) Enrolled in an internship;

(ii) Enrolled in a practicum; or

(iii) Employed in a research, teaching, or other assistantship.

(2) A student employed in an FWS job and receiving academic credit for that job may not be—

(i) Paid less than he or she would be if no academic credit were received;

(ii) Paid for receiving instruction in a classroom, laboratory, or other academic setting; and

(iii) Paid unless the employer would normally pay the person for the same position.

(Approved by the Office of Management and Budget under control number 1845–0019)

(Authority: 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61419, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997; 64 FR 58293, Oct. 28, 1999]

§ 675.21 Institutional employment.

(a) An institution, other than a proprietary institution, may employ a student to work for the institution itself, including those operations, such as food service, cleaning, maintenance, or security, for which the institution contracts, if the contract specifies—

(1) The number of students to be employed; and

(2) That the institution selects the students to be employed and determines each student's pay rate.

(b) A proprietary institution may employ a student to work for the institution, but only in jobs that—

(1) Are in community services as defined in § 675.2; or

(2) Are on campus and that—

(i) Involve the provision of student services as defined in § 675.2(b) that are directly related to the work-study student's training or education;

(ii) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(iii) Do not involve the solicitation of potential students to enroll at the proprietary institution.

(Authority: 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 59 FR 61417, Nov. 30, 1994; 67 FR 67078, Nov. 1, 2002]

§ 675.22 Employment provided by a Federal, State, or local public agency, or a private nonprofit organization.

(a) If a student is employed by a Federal, State, or local public agency, or a private nonprofit organization, the work that the student performs must be in the public interest.

(b) *FWS employment in the public interest*. The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is not in the public interest if—

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) It is for an elected official who is not responsible for the regular administration of Federal, State, or local government;

(3) It is work as a political aide for any elected official;

(4) A student's political support or party affiliation is taken into account in hiring him or her;

(5) It involves any partisan or nonpartisan political activity or is associated with a faction in an election for public or party office; or

(6) It involves lobbying on the Federal, State, or local level.

(Authority: 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 57 FR 32356, July 21, 1992; 59 FR 61419, Nov. 30, 1994]

§ 675.23 Employment provided by a private for-profit organization.

(a) An institution may use up to 25 percent of its FWS allocation and reallocation for an award year to pay the compensation of FWS students employed by a private for-profit organization.

(b) If a student is employed by a private, for-profit organization—

(1) The work that the student performs must be academically relevant to the student's educational program, to the maximum extent practicable; and

(2) The private for-profit organization—

(i) Must provide the non-Federal share of the student's compensation; and

(ii) May not use any FWS funds to pay an employee who would otherwise be employed by that organization.

(Authority: 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 57 FR 32356, July 21, 1992; 59 FR 61419, Nov. 30, 1994; 64 FR 58294, Oct. 28, 1999]

§ 675.24 Establishment of wage rate under FWS.

(a) *Wage rates.* (1) Except as provided in paragraph (a)(3) of this section, an institution shall compute FWS compensation on an hourly wage basis for actual time on the job. An institution may not pay a student a salary, commission, or fee.

(2) An institution may not count fringe benefits as part of the wage rate.

(3) An institution may pay a graduate student it employs a salary or an hourly wage, in accordance with its usual practices.

(b) *Minimum wage rate.* The minimum wage rate for a student employee under the FWS program is the minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(Authority: 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 59 FR 61419, Nov. 30, 1994]

§ 675.25 Earnings applied to cost of attendance.

(a)(1) The institution shall determine the amount of earnings from a FWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Room and board during a vacation period may also be considered a job related cost if they would not otherwise be incurred except for the FWS employment.

(b) If a student is employed under FWS during a vacation or other period when he or she is not attending classes, the institution shall apply the attributed earnings (earnings minus taxes and job related costs) to the cost of attendance for the next period of enrollment.

(Authority: 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 59 FR 61419, Nov. 30, 1994]

§ 675.26 FWS Federal share limitations.

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in § 675.23, may not exceed 75 percent unless the Secretary approves a higher share under paragraph (a)(2) or (d) of this section.

(2) The Federal share of the compensation paid to a student may exceed 75 percent, but may not exceed 90 percent, if—

(i) The student is employed at a private nonprofit organization or a Federal, State, or local public agency that—

(A) Is not a part of, and is not owned, operated, or controlled by, or under common ownership, operation, or control with, the institution;

(B) Is selected by the institution on an individual case-by-case basis;

(C) Would otherwise be unable to afford the costs of this employment; and

(ii) The number of students compensated under paragraph (a)(2)(i) of this section is not more than 10 percent of the total number of students paid

under the FWS Program at the institution.

(3) The Federal share of the compensation paid to a student employed by a private for-profit organization may not exceed 50 percent.

(4) An institution may not use FWS funds to pay a student after he or she has, in addition to other estimated financial assistance, earned $300 or more over his or her financial need.

(b) The institution may not include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workers' compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its not-Federal share, and any share of administrative costs that the employer agreed to pay, the excess funds must be—

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(d) For each award year, the Secretary authorizes a Federal share of 100 percent of the compensation earned by a student under this part if—

(1) The work performed by the student is for the institution itself, for a Federal, State, or local public agency, or for a private nonprofit organization; and

(2)(i) The institution in which the student is enrolled—

(A) Is designated as an eligible institution under—

(*1*) The Developing Hispanic-Serving Institutions Program (34 CFR part 606);

(*2*) The Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, or Alaska Native and Native Hawaiian-Serving Institutions Program (34 CFR part 607);

(*3*) The Strengthening Historically Black Colleges and Universities Program (34 CFR part 608); or

(*4*) The Strengthening Historically Black Graduate Institutions Program (34 CFR part 609); and

(B) Requests that increased Federal share as part of its regular FWS funding application for that year;

(ii) The student is employed as a reading tutor for preschool age children or children who are in elementary school;

(iii) The student is performing family literacy activities in a family literacy project that provides services to families with preschool age children or children who are in elementary school;

(iv) The student is employed as a mathematics tutor for children who are in elementary school through the ninth grade; or

(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).

(Authority: 20 U.S.C. 1068d and 1103d; 42 U.S.C. 2753)

[52 FR 45770, Dec. 1, 1987, as amended at 59 FR 61417, 61419, Nov. 30, 1994; 61 FR 60396, Nov. 27, 1996; 62 FR 63439, Nov. 28, 1997; 63 FR 52855, Oct. 1, 1998; 64 FR 58294, Oct. 28, 1999; 66 FR 34039, June 26, 2001; 71 FR 45698, Aug. 9, 2006; 74 FR 55950, Oct. 29, 2009]

§ 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the FWS program, to pay the institutional share of FWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution shall document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the FWS program.

(b) An institution may not solicit or accept fees, commission, contributions, or gifts as a condition for FWS employment, nor permit any organization

with which it has an employment agreement to do so.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 42 U.S.C. 2754)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61419, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997]

Subpart B—Job Location and Development Program

§ 675.31 Purpose.

The purpose of the Job Location and Development program is to expand off-campus job opportunities for students who are enrolled in eligible institutions of higher education and want jobs, regardless of their financial need, and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756)

[59 FR 61417, Nov. 30, 1994]

§ 675.32 Program description.

An institution may expend up to the lesser of $50,000 or 10 percent of its FWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs, including community service jobs, for currently enrolled students.

(Authority: 42 U.S.C. 2756)

[59 FR 61417, Nov. 30, 1994]

§ 675.33 Allowable costs.

(a)(1) *Allowable and unallowable costs.* Except as provided in paragraph (a)(2) of this section, costs reasonably related to carrying out the programs described in § 675.32 are allowable.

(2) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are not allowable.

(b) *Federal share of allowable costs.* An institution may use FWS funds, as provided in § 675.32, to pay up to 80 percent of allowable costs.

(c) *Institutional share of allowable costs.* An institution's share of allowable costs may be in cash or in the form of services. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756)

[52 FR 45770, Dec. 1, 1987, as amended at 59 FR 61419, Nov. 30, 1994]

§ 675.34 Multi-Institutional job location and development programs.

(a) An institution participating in the FWS program may enter into a written agreement to establish and operate job location programs for its students with other participating institutions.

(b) The agreement described in paragraph (a) of this section must—

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 42 U.S.C. 2756)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61417, Nov. 30, 1994]

§ 675.35 Agreement.

(a) A FWS participating institution, to establish or expand these programs, shall enter into an agreement with the Secretary.

(b) The agreement must provide—

(1) That the institution will administer the programs in accordance with the HEA and the provisions of this part;

(2) That the institution will submit to the Secretary an annual report on the use of the funds and an evaluation of the effectiveness of the programs in benefiting the institution's students; and

(3) Satisfactory assurances that—

(i) The institution will not use program funds to locate and develop jobs at an eligible institution;

(ii) The institution will use program funds to locate and develop jobs for students during and between periods of attendance at the institution, not upon graduation;

(iii) The program will not displace employees or impair existing service contracts;

(iv) Program funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(v) If the institution uses Federal funds to contract with another institution, suitable performance standards will be part of that contract.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 42 U.S.C. 2756)

[52 FR 45770, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61417, 61419, Nov. 30, 1994]

§ 675.36 Procedures and records.

Procedures and records concerning the administration of a JLD project established and operated under this subpart are governed by applicable provisions of § 675.19.

(Authority: 42 U.S.C. 2756a)

§ 675.37 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's eligibility to participate in the FWS program, the action also applies to the institution's job location and development programs.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred—

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(Authority: 42 U.S.C. 2756a)

[52 FR 45770, Dec. 1, 1987, as amended at 59 FR 61419, Nov. 30, 1994]

Subpart C—Work-Colleges Program

SOURCE: 59 FR 61418, Nov. 30, 1994, unless otherwise noted.

§ 675.41 Special definitions.

The following definitions apply to this subpart:

(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—

(1) Is an integral and stated part of the institution's educational philosophy and program;

(2) Requires participation of all resident students for enrollment and graduation;

(3) Includes learning objectives, evaluation, and a record of work performance as part of the student's college record;

(4) Provides programmatic leadership by college personnel at levels comparable to traditional academic programs;

(5) Recognizes the educational role of work-learning-service supervisors; and

(6) Includes consequences for nonperformance or failure in the work-learning-service program similar to the consequences for failure in the regular academic program.

(Authority: 42 U.S.C. 2756b)

[59 FR 61418, Nov. 30, 1994, as amended at 74 FR 55950, Oct. 29, 2009]

§ 675.42 Allocation and reallocation.

The Secretary allocates and reallocates funds based on each institution's approved request for Federal funds for

the Work-Colleges program as a percent of the total of such approved requests for all applicant institutions.

(Authority: 42 U.S.C. 2756b)

§ 675.43 Purpose.

The purpose of the Work-Colleges program is to recognize, encourage, and promote the use of comprehensive work-learning-service programs as a valuable educational approach when it is an integral part of the institution's educational program and a part of a financial plan that decreases reliance on grants and loans and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756b)

[59 FR 61418, Nov. 30, 1994, as amended at 75 FR 55950, Oct. 29, 2009]

§ 675.44 Program description.

(a) An institution that satisfies the definition of ''work-college'' in § 675.41(a) and wishes to participate in the Work-Colleges program must apply to the Secretary at the time and in the manner prescribed by the Secretary.

(b) An institution may expend funds separately, or in combination with other eligible institutions, to provide work-learning-service opportunities for currently enrolled students.

(c) For any given award year, Federal funds allocated and reallocated for that award year under sections 442 and 462 of the HEA may be transferred for the purpose of carrying out the Work-Colleges program to provide flexibility in strengthening the self-help-through-work element in financial aid packaging.

(Authority: 42 U.S.C. 2756b)

[59 FR 61418, Nov. 30, 1994, as amended at 75 FR 55950, Oct. 29, 2009]

§ 675.45 Allowable costs, Federal share, and institutional share.

(a) *Allowable costs.* An institution participating in the Work-Colleges program may use its allocated and reallocated program funds to carry out the following activities:

(1) Support the educational costs of qualified students through self-help payments or credits provided under the work-learning-service program within the limits of part F of title IV of the HEA.

(2) Promote the work-learning-service experience as a tool of postsecondary education, financial self-help, and community service-learning opportunities.

(3) Carry out activities in sections 443 or 446 of the HEA.

(4) Administer, develop, and assess comprehensive work-learning-service programs including—

(i) Community-based work-learning-service alternatives that expand opportunities for community service and career-related work; and

(ii) Alternatives that develop sound citizenship, encourage student persistence, and make optimum use of assistance under the Work-Colleges program in education and student development.

(5) Coordinate and carry out joint projects and activities to promote work-learning-service.

(6) Carry out a comprehensive, longitudinal study of student academic progress and academic and career outcomes, relative to student self-sufficiency in financing their higher education, repayment of student loans, continued community service, kind and quality of service performed, and career choice and community service selected after graduation.

(b) *Federal share of allowable costs.* An institution, in addition to the funds allocated and reallocated for this program, may use transferred funds provided under its Federal Perkins Loan or its FWS program to pay allowable costs.

(c) *Institutional share of allowable costs.* An institution must match Federal funds made available for this program on a dollar-for-dollar basis from non-Federal sources. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756b)

[59 FR 61418, Nov. 30, 1994, as amended at 64 FR 58294, Oct. 28, 1999; 75 FR 55950, Oct. 29, 2009]

§ 675.46 Unallowable costs.

An institution participating in the Work-Colleges program may not use its allocated and reallocated program funds and transferred funds provided under its Federal Perkins Loan or its

FWS program to pay costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs.

(Authority: 42 U.S.C. 2756b)

§ 675.47 Multi-institutional work-colleges arrangements.

(a) An institution participating in the Work-Colleges program may enter into a written agreement with another participating institution to promote the work-learning-service experience.

(b) The agreement described in paragraph (a) of this section must—

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 42 U.S.C. 2756b)

§ 675.48 Agreement.

To participate in the Work-Colleges program, an institution shall enter into an agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Assure that it will comply with all the appropriate provisions of the HEA and the appropriate provisions of the regulations;

(b) Assure that it satisfies the definition of ''work-college'' in § 675.41(a);

(c) Assure that it will match the Federal funds according to the requirements in § 675.45(c); and

(d) Assure that it will use funds only to carry out the activities in § 675.45(a).

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 42 U.S.C. 2756b)

§ 675.49 Procedures and records.

In administering a Work-Colleges program under this subpart, an institution shall comply with the applicable provisions of 34 CFR part 673 and this part 675.

(Authority: 42 U.S.C. 2756b)

[59 FR 61418, Nov. 30, 1994, as amended at 61 FR 60396, Nov. 27, 1996]

§ 675.50 Termination and suspension.

Procedures for termination and suspension under this subpart are governed by applicable provisions found in 34 CFR part 668, subpart G of the Student Assistance General Provisions regulations.

(Authority: 42 U.S.C. 2756b)

APPENDIX A TO PART 675 [RESERVED]

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

NOTE: An asterisk (*) indicates provisions that are common to parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

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676.18 Use of funds.
676.19 Fiscal procedures and records.
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676.21 FSEOG Federal share limitations.

AUTHORITY: 20 U.S.C. 1070b—1070b–3, unless otherwise noted.

SOURCE: 52 FR 45778, Dec. 1, 1987, unless otherwise noted.

§ 676.1 Purpose and identification of common provisions.

(a) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program awards grants to financially needy students attending institutions of higher education to help them pay their educational costs.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 20 U.S.C. 1070b)

[52 FR 45778, Dec. 1, 1987, as amended at 59 FR 61420, Nov. 30, 1994]

§ 676.2 Definitions.

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

Academic Competitiveness Grant (ACG) Program
Academic year
Award year
Clock hour
Enrolled
Expected family contribution (EFC)
Federal Family Education Loan (FFEL)
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal SLS Program
Federal Work-Study (FWS) Program
Full-time student
HEA
National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program
Payment period
Secretary
Teacher Education Assistance for College and Higher Education (TEACH) Grant Program
TEACH Grant
Undergraduate student

(b) The Secretary defines other terms used in this part as follows:

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

**Need-based employment:* Employment provided by an institution itself or by another entity to a student who has demonstrated to the institution or the entity (through standards or methods it establishes) a financial need for the earnings from that employment for the purpose of defraying educational costs of attendance for the award year for which the employment is provided.

(Authority: 20 U.S.C. 1070g, 1087aa–1087ii)

[52 FR 45778, Dec. 1, 1987, as amended at 53 FR 52582, Dec. 28, 1988; 57 FR 32357, July 21, 1992; 59 FR 61421, Nov. 30, 1994; 60 FR 61815, Dec. 1, 1995; 61 FR 60608, Nov. 29, 1996; 69 FR 12276, Mar. 16, 2004; 71 FR 38003, July 3, 2006; 72 FR 62030, Nov. 1, 2007; 73 FR 35495, June 23, 2008]

§§ 676.3–676.7 [Reserved]

§ 676.8 Program participation agreement.

To participate in the FSEOG program, an institution shall enter into a participation agreement with the Secretary. The participation agreement provides, among other things, that the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the FSEOG program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR part 668.

(Authority: 20 U.S.C. 1070b *et seq.*, and 1094)

[52 FR 45778, Dec. 1, 1987, as amended at 59 FR 61421, Nov. 30, 1994]

§ 676.9 Student eligibility.

A student at an institution of higher education is eligible to receive an FSEOG for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(b) Is enrolled or accepted for enrollment as an undergraduate student at the institution; and

(c) Has financial need as determined in accordance with part F of title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

(1) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1070b–1, 1070b–2 and 1091)

[52 FR 45778, Dec. 1, 1987, as amended at 59 FR 61421, Nov. 30, 1994; 62 FR 50848, Sept. 26, 1997]

§ 676.10 Selection of students for FSEOG awards.

(a)(1) In selecting among eligible students for FSEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Federal Pell Grants in that year.

(2) If the institution has FSEOG funds remaining after giving FSEOG awards to all the Federal Pell Grant recipients at the institution, the institution shall award the remaining FSEOG funds to those eligible students with the lowest expected family contributions who will not receive Federal Pell Grants.

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, a reasonable portion of the allocation must be offered to those students.

(Authority: 20 U.S.C. 1070b–2)

[52 FR 45778, Dec. 1, 1987, as amended at 59 FR 61420, 61421, Nov. 30, 1994; 64 FR 58294, Oct. 28, 1999]

§§ 676.11–676.15 [Reserved]

§ 676.16 Payment of an FSEOG.

(a)(1) Except as provided in paragraphs (b) and (e) of this section, an institution shall pay in each payment period a portion of an FSEOG awarded for a full academic year.

(2) The institution shall determine the amount paid each payment period by the following fraction:

$$\frac{\text{FSEOG}}{\text{N}}$$

where:

FSEOG = the total FSEOG awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may pay the student, within each payment period, at such times and in such amounts as it determines best meets the student's needs.

(b) If a student incurs uneven cost or estimated financial assistance amounts during an academic year and needs additional funds in a particular payment period, the institution may pay FSEOG funds to the student for those uneven costs.

(c) An institution shall disburse funds to a student or the student's account in accordance with the provisions in § 668.164.

(d)(1) The institution shall return to the FSEOG account any funds paid to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(e) A correspondence student shall submit his or her first completed lesson before receiving an FSEOG payment.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 20 U.S.C. 1070b. 1091)

[52 FR 45778, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32357, July 21, 1992; 59 FR 61420, 61421, Nov. 30, 1994; 59 FR 61722, Dec. 1, 1994; 61 FR 60396, Nov. 27, 1996; 61 FR 60608, Nov. 29, 1996; 71 FR 45698, Aug. 9, 2006; 72 FR 62030, Nov. 1, 2007]

§ 676.17 [Reserved]

§ 676.18 Use of funds.

(a) *General.* An institution may use its FSEOG allocation and reallocation only for—

(1) Making grants to eligible students; and

(2) Paying administrative expenses as provided for in 34 CFR 673.7.

(b) *Transfer back of funds to FWS.* An institution shall transfer back to the FWS program any funds unexpended at the end of the award year that it transferred to the FSEOG program from the FWS program.

(c) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year.

(2) Before an institution may spend its current year FSEOG allocation, it must spend any funds carried forward from the previous year.

(d) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental FSEOG allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) *Use of funds carried forward and carried back.* An institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) *Carry back funds for summer FSEOG awards.* An institution may carry back and expend in the previous award year any portion of its initial and supplemental FSEOG allocations for the current award year to make awards to eligible students for payment periods that begin on or after May 1 of the previous award year but end prior to the beginning of the current award year.

(Authority: 20 U.S.C. 1070b *et seq.*, 1095 and 1096)

[52 FR 45778, Dec. 1, 1987, as amended at 57 FR 32357, July 21, 1992; 59 FR 61420, 61421, Nov. 30, 1994; 61 FR 60396, Nov. 27, 1996; 64 FR 58294, Oct. 28, 1999]

§ 676.19 Fiscal procedures and records.

(a) *Fiscal Procedures.* (1) In administering its FSEOG program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) An institution shall maintain funds received under this part in accordance with the requirements in § 668.163.

(b) *Records and reporting.* (1) An institution shall follow the record retention and examination provisions in this part and in 34 CFR 668.24.

(2) An institution shall establish and maintain program and fiscal records that are reconciled at least monthly.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(Approved by the Office of Management and Budget under control number 1840–0535)

(Authority: 20 U.S.C. 1070b, 1094, and 1232f)

[52 FR 45778, Dec. 1, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 59 FR 61421, Nov. 30, 1994; 59 FR 61722, Dec. 1, 1994; 60 FR 61815, Dec. 1, 1995; 61 FR 60493, Nov. 27, 1996; 62 FR 50848, Sept. 26, 1997]

§ 676.20 Minimum and maximum FSEOG awards.

(a) An institution may award an FSEOG for an academic year in an amount it determines a student needs to continue his or her studies. However, except as provided in paragraph (c) of this section, an FSEOG may not be awarded for a full academic year that is—

(1) Less than $100; or

(2) More than $4,000.

(b) For a student enrolled for less than a full academic year, the minimum allowable FSEOG may be proportionately reduced.

(c) The maximum amount of the FSEOG may be increased from $4,000 to as much as $4,400 for a student participating in a program of study abroad that is approved for credit by the home institution, if reasonable costs for the study abroad program exceed the cost of attendance at the home institution.

(Authority: 20 U.S.C. 1070, 1070b–1)

[52 FR 45778, Dec. 1, 1987, as amended at 59 FR 61421, Nov. 30, 1994]

§ 676.21 FSEOG Federal share limitations.

(a) Except as provided in paragraph (b) of this section, for the 1993–94 award year and subsequent award years, the Federal share of the FSEOG awards made by an institution may not exceed 75 percent of the amount of FSEOG awards made by that institution.

(b) The Secretary authorizes, for each award year, a Federal share of 100 percent of the FSEOGs awarded to students by an institution that—

(1) Is designated as an eligible institution under—

(i) The Developing Hispanic-Serving Institutions Program (34 CFR part 606);

(ii) The Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, or Alaska Native and Native Hawaiian-Serving Institutions Program (34 CFR part 607); or

(iii) The Strengthening Historically Black Colleges and Universities Program (34 CFR part 608); and

(2) Requests that increased Federal share as part of its regular SEOG funding application for that year.

(c) The non-Federal share of SEOG awards must be made from the institution's own resources, which include for this purpose—

(1) Institutional grants and scholarships;

(2) Tuition or fee waivers;

(3) State scholarships; and

(4) Foundation or other charitable organization funds.

(Authority: 20 U.S.C. 1068d, 1103d, and 1070b–2)

[52 FR 45778, Dec. 1, 1987, as amended at 59 FR 61421, Nov. 30, 1994; 66 FR 34039, June 26, 2001]

PARTS 677–679 [RESERVED]

FINDING AIDS

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List of CFR Sections Affected

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For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.govinfo.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.govinfo.gov*.

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400 Heading revised; interim 76100

400.3 (a)(1), (6) and (9) removed; (e) added; interim 76100

400.4 (a) introductory text revised; interim 76100

426 Removed; interim 76100

460 Removed; interim 76100

464 Removed; interim 76100

491 Removed; interim 76100

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535 Removed; interim 76100

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600.10 (c)(1), (2), (3)(i) and authority citation revised 65006

600.20 (c)(1) introductory text and authority citation revised 65006

600.21 (a)(11) added; authority citation revised 65006

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607 Authority citation revised 76100

607.6 (a)(1) and (6) removed; (c) added; interim 76100

608 Authority citation revised 76101

608.3 (a)(1) and (6) removed; (c) added; interim 76101

608.4 (a) introductory text revised; interim 76101

609.3 (a)(1) and (6) removed; (c) added; interim 76101

609.4 (a) introductory text revised; interim 76101

611.61 Itroductory text revised; interim 76101

614.3 (a)(1), (5) and (8) removed; (c) added; interim 76101

628.5 (b)(1)(i) and (ii) removed; (b)(1)(v), (vi), (vii) and (c) added; (b)(2) revised; interim 76101

628.47 (d) and (e) revised; interim 76101

636 Removed; interim 76101

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661.4 Heading and (a) introductory text revised; interim 76104
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463 Added 55553
463.100—463.145 (Subpart H) Added 56046
463.150—463.240 (Subpart I) Added 56051
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Chapter VI Policy statement 39196
600.2 Amended; eff. 7-1-18 92262
600.9 (c) revised; (d) added; eff. 7-1-18 92262
612 Added 75614
668 Authority citation revised 76070
668.2 Regulation at 80 FR 67193 (b) early implementation date announced 20251
(a) amended; eff. 7-1-18 92262
668.14 (b)(30)(ii)(C) and (31)(v) amended; (b)(32) added 76070
668.41 (h) and (i) added; authority citation revised 76070
668.50 Added; eff. 7-1-18 92262
668.71 (c) amended 76072
668.90 (a)(3) revised 76072
668.93 (h) and (i) redesignated as (i) and (j); new (h) added 76072
668.161—668.167 (Subpart K) Regulation at 80 FR 67194 (a)(1) and (c) early implementation date announced 20251

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(e)(2)(ii)(B), (viii), (3), (f)(4)(i)(A), (vi), (xii) and (5) corrected 20251
(a)(2) introductory text corrected 20251
(a)(2) corrected 20251
668.171 Revised 76072
668.175 (c), (d), (f) and authority citation revised; (e) removed; (f) added 76075
668.176 Added 76076
668.171—668.176 (Subpart L) Appendix C added 76076
674.33 (g)(3) revised; (g)(8)(vi) through (ix) redesignated as (g)(8)(vii) through (x); new (g)(8)(vi) added 76078
674.61 (a) revised 76078

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600 Policy statement 48424
612 Removed 21475
668 Policy statement 13227, 39362, 45465, 48195
Regulation implementation date delayed in part to 7-1-18 30975
Regulation at 82 FR 21475 compliance date extended in part to 1-1-18 32762
668.14 Regulation at 81 FR 76070 eff. date delayed indefinitely 27621
Regulation at 81 FR 76070 eff. date delayed to 7-1-18 49114
668.41 Regulation at 81 FR 76070 eff. date delayed indefinitely 27621
Regulation at 81 FR 76070 eff. date delayed to 7-1-18 49114
668.71 Regulation at 81 FR 76072 eff. date delayed indefinitely 27621
Regulation at 81 FR 76072 eff. date delayed to 7-1-18 49114
668.81 (a)(5), (e), (f) and (g) added; authority citation revised 6256
668.83 (f)(1) amended 6257
668.84 (b)(3) and (4) revised 6257
668.85 (b)(1)(iii) and (4) amended; (b)(3) revised 6257
668.86 (a)(3) amended; (b)(3) and (4) revised 6257
668.87 Redesignated as 668.88; added 6257

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668.88 Redesignated as 668.89; redesignated from 668.87 6257
Revised 6258
668.89 Redesignated as 668.90; redesignated from 668.88 6257
Revised 6258
668.90 Redesignated as 668.91; redesignated from 668.89 6257
Regulation at 81 FR 76072 eff. date delayed indefinitely 27621
Regulation at 81 FR 76072 eff. date delayed to 7-1-18 49114
668.91 Redesignated as 668.92; redesignated from 668.90 6257
(a)(2) redesignated as (a)(2)(i); new (a)(2)(i) and (4) amended; (a)(2)(ii) and (c)(2)(x) added 6259
668.92 Redesignated as 668.93; redesignated from 668.91 6257
668.93 Redesignated as 668.94; redesignated from 668.92 6257
Regulation at 81 FR 76072 eff. date delayed indefinitely 27621
Regulation at 81 FR 76072 eff. date delayed to 7-1-18 49114
668.94 Redesignated as 668.95; redesignated from 668.93 6257
668.95 Redesignated as 668.96; redesignated from 668.94 6257
668.96 Redesignated as 668.97; redesignated from 668.95 6257
(a), (b) and (c) amended 6259
668.97 Redesignated as 668.98; redesignated from 668.96 6257
668.98 Redesignated as 668.99; redesignated from 668.97 6257
668.99 Redesignated from 668.98 6257
(c) amended 6259
668.171 Regulation at 81 FR 76072 eff. date delayed indefinitely 27621
Regulation at 81 FR 76072 eff. date delayed to 7-1-18 49114
668.175 Regulation at 81 FR 76075 eff. date delayed indefinitely 27621
Regulation at 81 FR 76075 eff. date delayed to 7-1-18 49114
668 Regulation 81 FR 76076 eff. date delayed indefinitely 27621
Regulation at 81 FR 76076 eff. date delayed to 7-1-18 49114
668.231 (b)(1) introductory text amended; authority citation removed 31913

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674 Authority citation revised 31913
Policy statement 45465, 48195
674.17 (a) introductory text amended; CFR correction 13968
674.33 Regulation at 81 FR 76078 eff. date delayed indefinitely 27621
Regulation at 81 FR 76078 eff. date delayed to 7-1-18 49114
674.51 (l)(1) amended; authority citation removed 31913

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412 Removed 47839
415 Removed 47839
421 Removed 47839
425 Removed 47839
427 Removed 47839
428 Removed 47839
429 Removed 47839

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600.2 Regulation at 81 FR 92262 eff. date further delayed to 7-1-20 31303
600.9 Regulation at 81 FR 92262 eff. date further delayed in part to 7-1-20 31303
611 Removed 52150
614 Removed 52150
636 Removed 52150
649 Removed 52150
Chapter VI Policy statement 10619
668 Notification 28177
Technical correction 28543
Waiver 61121
668.2 Regulation at 81 FR 92262 eff. date further delayed to 7-1-20 31303
668.14 Regulation at 81 FR 76070 eff. date further delayed to 7-1-19 6459
668.41 Regulation at 81 FR 76070 eff. date further delayed to 7-1-19 6459
668.50 Regulation at 81 FR 92262 eff. date further delayed to 7-1-20 31303
668.71 Regulation at 81 FR 76072 eff. date further delayed to 7-1-19 6459
668.84 (a) amended 2065

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668.90 Regulation at 81 FR 76072 eff. date further delayed to 7-1-19 6459
668.93 Regulation at 81 FR 76072 eff. date further delayed to 7-1-19 6459
668.171 Regulation at 81 FR 76072 eff. date further delayed to 7-1-19 6459
668.175 Regulation at 81 FR 76075 eff. date further delayed to 7-1-19 6459
668 Regulation at 81 FR 76076 eff. date further delayed to 7-1-19 6459
674.33 Regulation at 81 FR 76078 eff. date further delayed to 7-1-19 6459

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400 Removed 7299
401 Authority citation and heading revised 7299
401.1 Removed; new section redesignated from 401.23 and revised 7299
401.2 Removed 7299
401.3 Removed 7299
401.4 Removed 7299
401.5 Removed 7299
401.10 Removed 7299
401.20 Removed 7299

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401.21 Removed 7299
401.22 Removed 7299
401.23 Redesignated as 401.1 7299
401.30 Removed 7299
401.31 Removed 7299
402 Removed 7299
403 Removed 7299
406 Removed 7299
410 Removed 7299
411 Removed 7299
413 Removed 7299
461 Removed 6975

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668.14 Regulation at 81 FR 76070 eff. 10-16-18 9964
668.41 Regulation at 81 FR 76070 eff. 10-16-18 9964
668.71 Regulation at 81 FR 76071 eff. 10-16-18 9964
668.84 (a) amended 974
668.90 Regulation at 81 FR 76071 eff. 10-16-18 9964
668.90 Technical correction 9965
668.93 Regulation at 81 FR 76071 eff. 10-16-18 9964
668.93 Technical correction 9966
668.171 Regulation at 81 FR 76071 eff. 10-16-18 9964
668.175 Regulation at 81 FR 76075 eff. 10-16-18 9964
668.176 Regulation at 81 FR 76076 eff. 10-16-18 9964
668.171—668.176 (Subpart L) Regulation at 81 FR 76076 eff. 10-16-18 9964
674.33 Regulation at 81 FR 76078 eff. 10-16-18 9964