

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 667, 668, and 674

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; State Postsecondary Review Program; Student Assistance General Provisions; Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the following regulatory provisions to correct minor technical errors and to conform with self-implementing statutory provisions: the institutional eligibility regulations contained in Part 600, Subparts A and C; the allotment formula and funding procedures regulations contained in Part 667, Subpart B of the State Postsecondary Review Program regulations; the student eligibility regulations contained in Part 668, Subpart A of the Student Assistance General Provisions regulations; the standards for participation regulations contained in Part 668, Subpart B; the student consumer information regulations contained in Part 668, Subpart D; the verification regulations contained in Part 668, Subpart E; the fine, limitation, suspension, and termination proceedings regulations contained in Part 668, Subpart G; the cash management regulations contained in Part 668, Subpart K; and the Federal Perkins Loan Program regulations contained in Part 674, Subpart A.

EFFECTIVE DATE: July 31, 1995.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION: The following sections are amended for clarification and consistency throughout the title IV, HEA programs, and to correct technical errors and omissions in the text of the final regulations:

Section 600.7 is amended to address an omission from current regulations addressing the effect of a bankruptcy filing on the institution's eligibility. Current regulations address the effect of filing for relief in bankruptcy on institutional eligibility, but omit explanation of the effect of an

involuntary petition filed against the institution or its affiliates. In filing an involuntary petition, creditors seek a judicial ruling that an entity is in such financial straits that it must be treated, for the benefit of the creditors, like an entity that needs and voluntarily seeks protection in bankruptcy. Section 600.7 is therefore amended to clarify that an institution is subject to the statutory exclusion from eligibility only after the institution or its affiliate voluntarily files for relief in bankruptcy or there has been an order for relief entered as a result of an involuntary petition for relief against the institution or its affiliate.

Section 600.30(a) describes the events that an institution must report to the Secretary; as recently published, paragraph (a)(7) would have the institution report the "exercise" of substantial control by an individual or entity that previously lacked such control. This appeared to change prior requirements that the institution report the acquisition of substantial control by such an individual, rather than the first exercise of such control. This change was not intentional, and the provision is revised to continue the requirement that the institution report the acquisition of substantial control by one who did not have that power.

Section 600.31 is revised to correct inadvertent errors in the percentages of ownership interest that would be deemed to constitute control of a closely-held corporation; paragraph (c)(1)(ii) of this section describes a 50% interest as sufficient to give control over such a corporation; this should read "greater than" a 50% interest. Similarly, current regulations refer to a change "of" ownership and control, yet many of the changes addressed in this section are really changes within the current ownership of an institution, and section 498 of the HEA itself refers to changes "in" ownership and control. The regulatory references are revised here to refer to changes "in" ownership and control, in order to more accurately reflect this fact.

Section 668.7 is also amended as a result of recent changes set forth in the Bankruptcy Reform Act of 1994 (Pub. L. 103-394). The Bankruptcy Reform Act of 1994 prohibits a school, lender, guarantor, or the Department of Education from denying an applicant eligibility for title IV, HEA program assistance on the grounds that the applicant failed to repay a debt that was discharged or dischargeable in bankruptcy. This amendment took effect on October 22, 1994, the date of enactment of the law, and superseded those provisions of § 668.7(f) that

provided that a borrower was considered to remain in default on a title IV, HEA program loan discharged in bankruptcy and therefore was ineligible for new loan assistance unless the borrower made satisfactory arrangements to repay the debt. Section 668.7(f) is therefore amended here to conform with existing law: a student whose loan or grant overpayment is discharged or determined to be dischargeable qualifies for new title IV, HEA grant, loan, and work study assistance without regard to the prior default on that loan or unpaid status on that grant overpayment.

Bankruptcy law establishes a number of exceptions to discharge that can apply to student loans and grant overpayments, but the most pertinent of these, found in 11 U.S.C. 523(a)(8), addresses the dischargeability of student aid debts in particular. The legislative history of 11 U.S.C. 523(a)(8) and cases interpreting that provision make clear that this provision of bankruptcy law, which is unaffected by the new amendments, makes title IV, HEA student aid debts presumptively non-dischargeable in bankruptcy until the borrower files a complaint in the bankruptcy proceeding and obtains a court decision that the debt qualifies for discharge under either of the two exceptions in 11 U.S.C. 523(a)(8). An applicant for student aid who claims that a defaulted prior student loan or an unpaid grant overpayment obligation is dischargeable or was discharged in bankruptcy must provide the institution with the appropriate documentation to prove that claim.

To reduce unnecessary burden on potential title IV, HEA applicants, the regulation as revised permits the holder of the debt to accept what it deems to be satisfactory proof that the debt would qualify for a determination of dischargeability under 11 U.S.C. 523(a)(8)(A) based on the fact that the debt first became due for the requisite period—currently seven years—prior to the filing of the petition in bankruptcy. The holder of the loan or grant obligation can typically determine the duration of the repayment with reliability from its own records. If the holder of the loan or grant obligation is satisfied that these records establish that the debt was in repayment for the requisite period, there is no need to require the applicant to secure a judicial determination of that fact. It has been a common practice to accept this showing as sufficient to consider a title IV, HEA program debt to be dischargeable, and this regulation reflects and incorporates that practice. However, where the duration of the repayment period is in

dispute, where the applicant asserts that repayment would constitute an undue hardship so as to be dischargeable under 11 U.S.C. 523(a)(8)(B), or where the dischargeability of the debt is in question on other grounds, such as failure to schedule the debt properly, the applicant must obtain a specific judicial determination that the debt is dischargeable.

Section 668.15 is amended by adding paragraph (b)(7)(i)(C), revising paragraphs (c)(1)(ii), and (e)(3)(ii), and by adding a new paragraph (e)(3)(iii). Paragraph 668.15(b)(7)(i)(C) is a continuing requirement that was inadvertently omitted in the November 29, 1994 Final Regulations. The Secretary is revising § 668.15(c) to clarify that an institution may rebut a finding of not meeting financial responsibility standards due to the past performance of its owners by showing that any prior liabilities are in repayment. Section 668.15(e)(3) has been modified to include a reference to the Office of Management and Budget Circular for use by state and local governments.

Section 668.16 is amended to allow schools to appeal FFEL cohort default rates under all FFEL appeal criteria. Under the current regulations, appeal is allowed only under paragraph § 668.17(d): erroneous data under mitigating circumstances. This exclusion was unintentional.

Section 668.22 is corrected to clarify that the federal refund by an institution to a student attending that institution is based upon all the institutional charges assessed the student by the institution, not just tuition charges. This section is also corrected to clarify when the administrative fee of the lesser of 5% or \$100 is applicable.

Section 668.47 is amended to clarify that, in paragraph (a)(6)(i), all statistics concerning the occurrence on campus of the stated criminal offenses, whether reported to the local police or to an official of the school, must be included in the annual security report published and distributed by September first of each and every year starting with September 1, 1992. Paragraph (a)(8) is corrected and redesignated to eliminate reference to the Hate Crimes Statistics Act; that act does not apply to the crimes listed in this paragraph. Paragraph (b)(1) is corrected to clarify that the paragraph applies only to distribution to current students and employees, as distribution requirements for prospective students are covered in a separate paragraph (paragraph (b)(2)).

Section 668.57 is corrected to clarify that the signature of the independent applicant need not be accompanied by

the signature of the applicant's spouse for the purpose of verifying household size and the number of family members enrolled in a postsecondary educational institution. This correction conforms with the signature requirements on the 1995-1996 Free Application for Federal Student Aid (FAFSA).

Section 668.59 is amended to include the applicant's income earned from work in the use of the \$400 tolerance option provided in the final regulations for Student Assistance General Provisions that were published in the **Federal Register** on November 29, 1994. This option authorizes an institution to disburse assistance under these programs without recalculating the applicant's award. If the net difference in dollar items for Adjusted Gross Income (AGI), untaxed income, and U.S. taxes paid is \$400 or less, the Secretary has determined that the \$400 tolerance in § 668.59(a)(2)(ii) and (c)(2)(ii) should also be applicable to income earned from work reported by individuals who are not required to file a tax return.

The language of § 668.83 is revised to correct the description of the roles of the respective officials with regard to emergency actions, and the consequences of certain actions taken by those officials on pending emergency actions. The show-cause official, in ruling on objections raised to an emergency action, may continue, modify, or revoke a pending emergency action. A revocation by the show-cause official disposes of the action on the stated grounds with prejudice to its reinitiation on those same grounds. The initiating official may continue or modify a pending action, or may withdraw that action prior to its expiration. In contrast to revocation by the show-cause official, withdrawal by the initiating official of a pending emergency action is without prejudice to emergency action being reinitiated on the same grounds.

Sections 668.162, 668.165 and 668.166 are amended to clarify how the cash management regulations pertain to the provisions of the PLUS Loan program. Section 668.165 is also amended to clarify, in accordance with statute, that in order to disburse Federal Direct Student Loan program funds to a student, an institution must credit that student's account if the institution uses student accounts.

Section 668.163 is revised to clarify the individual steps required under the reimbursement funding method.

Section 668.164 is amended to clarify that FFEL program funds are excluded from the bank account and interest recovery requirements of this section. An institution that receives FFEL

Program funds through electronic funds transfer or by master check must meet the requirements described in § 682.207(b).

Section 674.16(d) is amended to restore the provision allowing an institution to advance funds to a student while studying abroad, without obtaining the student's signature for the advance of funds. The December 1, 1994 Student Assistance General Provisions final regulations inadvertently amended this section of the November 30, 1994 final Campus-based regulations.

Waiver of Notice of Proposed Rulemaking

In accordance with section 437 of the General Education Provisions Act, 20 U.S.C. 1232, and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the regulatory changes in this document are necessary to correct minor technical errors and to implement mandatory statutory provisions. The changes in this document do not establish any new policies. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These regulations contain technical amendments designed to clarify and correct current regulations. The changes will not have a significant economic impact on the institutions affected.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—

education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 667

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

34 CFR Part 668

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

34 CFR Part 674

Education loan programs—education, Student aid.

Dated: June 27, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

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

The Secretary amends Parts 600, 667, 668, and 674 of Title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for Part 600 continues to read as follows:

Authority: 20 U.S.C. 1088, 1091, 1094, 1099b, 1099c, and 1141, unless otherwise noted.

2. Section 600.7 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(iv), and (a)(2) to read as follows:

§ 600.7 Conditions of institutional eligibility.

(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—

* * * * *

(iv) Fifty percent or more 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. Section 600.30 is amended by revising paragraph (a)(7) introductory text to read as follows:

§ 600.30 Institutional notification requirements.

(a) * * *

(7) A person's ability to affect substantially the actions of the institution, if that person did not previously have this ability. The Secretary generally considers a person to have this ability if the person—

* * * * *

4. Section 600.31 is amended by revising paragraphs (a)(1), (a)(2) introductory text, (c)(1), (c)(2), (c)(3) introductory text, (c)(4), and (e) introductory text, to read as follows:

§ 600.31 Change in ownership resulting in a change of control.

(a) General. (1) An institution that undergoes a change in ownership that results in a change of 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 this institution or the parent corporation of that entity, acquires or loses the ability to control the institution.

(2) 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—

* * * * *

(c) Standards for identifying changes in 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 corporation required to be registered with the Securities and Exchange Commission (SEC). A change in ownership and control occurs when a change of control of the corporation takes place that gives rise to the obligation to file a Form 8K with the SEC notifying that agency of the change in control.

(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—

* * * * *

(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.

* * * * *

(e) Excluded transactions. A change in ownership and control otherwise subject to this section does not include a transfer of ownership and control upon the retirement or death of the owner, to—

* * * * *

PART 667—STATE POSTSECONDARY REVIEW PROGRAM

5. The authority for Part 667 continues to read as follows:

Authority: 20 U.S.C. 1099a through 1099a-3, unless otherwise noted.

6. Section 667.12 is amended by revising paragraph (c)(2)(iii) introductory text, and (c)(2)(iii)(A) to read as follows:

§ 667.12 Application for funds.

* * * * *

(c) * * *

(2) * * *

(iii) A SPRE may establish the lowest review priority for an institution if—

(A) The institution is referred to the SPRE for a reason described in § 667.5(b)(6) concerning the timely submission of an audit report or § 667.5(b)(9) concerning a change in ownership that results in a change of control; and

* * * * *

**PART 668—STUDENT ASSISTANCE
GENERAL PROVISIONS**

7. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1099c, and 1141, unless otherwise noted.

8. Section 668.7 is amended by removing paragraph (b)(1) introductory text "Before admission—", revising paragraph (f), and revising the authority citation to read as follows:

§ 668.7 Eligible student.

* * * * *

(f) *Effect of bankruptcy relief on title IV, HEA program eligibility.* The Secretary does not consider an unpaid title IV, HEA program loan to be in default nor an unpaid title IV, HEA program grant overpayment to be owed for purposes of determining eligibility for assistance under a title IV, HEA program if the student applicant—

- (1) Has obtained 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) At the time the applicant filed the petition for relief the loan or demand had been outstanding for repayment of the grant overpayment, 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.

* * * * *

(**Authority:** 20 U.S.C. 1070a-1070c-1, 1077, 1078, 1078-1-3, 1082, 1085, 1087a, 1087cc, and 1091; 28 U.S.C. 3201; 42 U.S.C. 2753; section 9 of Pub. L. 100-369; and 11 U.S.C. 523 and 525)

9. Section 668.13 is amended by revising paragraphs (c)(2)(ii) and (c)(2)(iii) to read as follows:

§ 668.13 Certification procedures.

* * * * *

- (c) * * *
- (2) * * *

(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

institution—s nationally recognized accrediting agency.

* * * * *

10. Section 668.15 is amended by adding new paragraph (b)(7)(i)(C), revising paragraphs (c)(1)(ii), and (e)(3)(ii), and by adding a new paragraph (e)(3)(iii) to read as follows:

§ 668.15 Factors of financial responsibility.

* * * * *

- (b) * * *
- (7) * * *
- (i) * * *

(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

* * * * *

- (c) * * *
- (1) * * *

(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

* * * * *

- (e) * * *
- (3) * * *

(ii) Office of Management and Budget Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations;" or

(iii) Office of Management and Budget Circular A-128, "Audits of State and Local Governments."

* * * * *

11. Section 668.16 is amended by removing the letter "(d)" from the cross-reference in the last sentence of paragraph (m)(2)(ii).

12. Section 668.22 is amended by revising paragraph (d)(1) to read as follows:

§ 668.22 Institutional refunds and repayments.

* * * * *

(d) *Federal Refund.* (1) "Federal refund," as used in this section, means a refund by an institution to a student attending that institution of not less than the portion of institutional charges (tuition, fees, room, board and other charges assessed the student by the institution) to be refunded as follows—

- (i) The institution must refund 100 percent of institutional charges, if a student withdraws from the institution before the first day of classes for the period of enrollment for which the student was charged;

(ii) The institution must refund 100 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if a student withdraws on the first day of classes for the period of enrollment for which the student was charged;

(iii) The institution must refund at least 90 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if a student withdraws at any time after the first day of classes for the period of enrollment for which the student was charged up to and including the end of the first 10 percent (in time) of that period of enrollment;

(iv) The institution must refund at least 50 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if the student withdraws at any time after the end of the first 10 percent (in time) of the period of enrollment for which the student was charged up to and including the end of the first 25 percent (in time) of that period of enrollment; and

(v) The institution must refund at least 25 percent of institutional charges, less an administrative fee, if any, as described in paragraph (d)(2) of this section, if the student withdraws at any time after the end of the first 25 percent (in time) of the period of enrollment for which the student was charged up to and including the end of the first 50 percent (in time) of that period of enrollment.

* * * * *

13. Section 668.47 is amended by revising paragraphs (a)(6)(i), (a)(8), (b)(1) introductory text, and (b)(1)(i) to read as follows:

§ 668.47 Institutional security policies and crime statistics.

- (a) * * *
- (6) * * *

(i) Statistics concerning the occurrence on campus of the following criminal offenses reported to local police agencies or to any official of the institution who has significant responsibility for student and campus activities:

- (A) Murder.
- (B) Rape (prior to August 1, 1992) or sex offenses, forcible or nonforcible (on or after August 1, 1992).
- (C) Robbery.
- (D) Aggravated assault.
- (E) Burglary.
- (F) Motor-vehicle theft; and

* * * * *

- (8) Statistics concerning the number of arrests for the following crimes occurring on campus:
 - (i) Liquor-law violations.

- (ii) Drug-abuse violations.
- (iii) Weapons possessions.

* * * * *

(b) * * *

(1) Current students and employees by appropriate publications and mailings, through—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or computer network; or

* * * * *

14. Section 668.57 is amended by revising paragraphs (b), (c)(1) introductory text, and (d)(3)(i) to read as follows:

§ 668.57 Acceptable documentation.

* * * * *

(b) *Number of family members in household.* An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by the applicant and one of the applicant's parents if the applicant is a dependent student, or 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) * * *

(1) Except as provided in § 668.56(b), (c), (d), and (e), an institution shall require an applicant selected for verification to verify annually information included on the application regarding the number of household members in the applicant's family enrolled on at least a half-time basis in postsecondary institutions. The institution shall require the applicant to verify the information by submitting a statement signed by the applicant and one of the applicant's parents, if the applicant is a dependent student, or by the applicant if the applicant is an independent student, listing—

* * * * *

(d) * * *

(3) * * *

(i) A statement signed by the applicant and one of the applicant's parents in the case of a dependent student, or by the applicant in the case of an independent student, certifying the amount of child support received; and

* * * * *

15. Section 668.59 is amended by revising paragraphs (a)(2)(ii) and (c)(2)(ii) to read as follows:

§ 668.59 Consequences of a change in application information.

(a) * * *

(2) * * *

(ii) No dollar amount in excess of \$400 as calculated by the net difference

between the corrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid and the uncorrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid. If no Federal Income Tax Return was filed, income earned from work may be used in lieu of Adjusted Gross Income (AGI).

* * * * *

(c) * * *

(2) * * *

(ii) No dollar amount in excess of \$400 as calculated by the net difference between the corrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid and the uncorrected sum of Adjusted Gross Income (AGI) plus untaxed income minus U.S. taxes paid. If no Federal Income Tax Return was filed, income earned from work may be used in lieu of Adjusted Gross Income (AGI).

* * * * *

16. Section 668.83 is amended by revising paragraphs (f)(2) and (g) to read as follows:

§ 668.83 Emergency action.

* * * * *

(f) * * *

(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.

* * * * *

(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.

* * * * *

17. Section 668.162 is amended by revising paragraph (1)(iii) under the definition of *Disburse* to read as follows:

§ 668.162 Definitions.

* * * * *

Disburse. * * *

(1) * * *

(iii) Dispensing cash for which an institution obtains a signed receipt from the student, or in the case of a PLUS Loan from the parent borrower; or

* * * * *

18. Section 668.163 is amended by revising paragraph (a)(3) to read as follows:

§ 668.163 Requesting funds.

(a) * * *

(3) *Reimbursement payment method.*

(i) The Secretary has sole discretion in determining whether to place an institution on the reimbursement payment method. Before an institution on reimbursement submits a request for cash, the Secretary requires the institution to—

(A) Identify the students for whom the institution is seeking reimbursement that will be included in the institution's request for cash;

(B) Document properly that each student included in the request for cash satisfies all applicable title IV, HEA program requirements and that the disbursements the institution will make to these students are for the correct amounts; and

(C) Credit appropriately the account of each student included in the request for cash.

(ii) Along with an institution's request for cash, the Secretary requires the institution to submit for review any documentation necessary for determining that the institution has complied with the requirements described in paragraphs (a)(3)(i)(B) and (a)(3)(i)(C) of this section and with any other requirements specified by the Secretary. The amount of the institution's request for cash may not exceed the amount of the disbursements the institution will make to students included in that request. When the institution receives the funds, it must disburse the funds immediately and only to the students identified in the institution's request for cash.

(iii) The Secretary approves the institution's request for cash and transfers electronically the amount of that request into a bank account designated by the institution if the Secretary determines that the institution has complied with all of the requirements described in paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

* * * * *

19. Section 668.164 is amended by revising paragraph (a) to read as follows:

§ 668.164 Maintaining funds.

(a) *General.* (1) Except for the requirement described in paragraph (f) of this section, this section does not apply to funds that an institution receives under the FFEL programs. An institution that receives FFEL program funds through electronic funds transfer or by master check must maintain those funds as provided under § 682.207(b).

(2)(i) For funds an institution receives under the Federal Pell Grant, Campus-based, SSIG, and FDSL programs, an institution must maintain a bank

account that meets the requirements under paragraphs (b) or (c) of this section into which the Secretary transfers or the institution deposits Federal funds that the institution receives from the title IV, HEA programs. Except as provided in paragraph (e) of this section, an institution is not required to maintain a separate account for title IV, HEA program funds.

(ii) An institution must—

(A) Notify the bank of the accounts that contain Federal funds and retain a record of that notice in its recordkeeping system; or

(B) Ensure that the name of the account discloses clearly that Federal funds are maintained in that account; and

(iii) File with the appropriate State or municipal government entity a UCC-1 statement disclosing that the account contains Federal funds and maintain a copy of that statement in its records.

* * * * *

20. Section 668.165 is amended by adding paragraph (a)(4) and by revising paragraphs (a)(1), (b)(1), (b)(2) introductory text, (b)(2)(i)(C), (b)(4)(i) introductory text, (c)(2), (d)(1)(i) and (d)(1)(iii) to read as follows:

§ 668.165 Disbursing funds.

(a) * * *

(1) An institution must notify a student or, in the case of a PLUS loan, the student's parent of the amount of title IV, HEA program funds the institution can expect to receive, and how and when those funds will be paid.

* * * * *

(4) If an institution uses student accounts, an institution must disburse a Direct Loan Program Loan by crediting the student's account.

(b) * * *

(1) *General.* In crediting the student's account with title IV, HEA program funds, the institution may apply those funds only to allowable charges described under paragraph (b)(3) of this section, except that the institution may not apply the student's title IV, HEA program funds to any charges the institution assessed the student in a prior award year or period of enrollment. An institution must provide written notification expeditiously to a student or parent, as applicable, that the institution has credited the student's

account with Direct Loan or FFEL program funds.

(2) Student account balances. Unless otherwise authorized, by a student or parent borrower, whenever an institution applies title IV, HEA program funds to a student's account and determines that an amount of those funds exceeds, or exceeded, the amount of allowable charges the institution assessed the student, the institution must pay that balance directly to the student, or in the case of a PLUS loan to the parent borrower, as soon as possible but—

(i) * * *

(C) The date the student, or parent borrower rescinds his or her authorization under paragraph (d) of this section; and

* * * * *

(4) * * *

(i) Except as provided in paragraph (b)(4)(ii) of this section, an institution, as a fiduciary for benefit of a student, may hold student funds from the title IV, HEA programs in excess of institutional charges included in paragraph (b)(3) of this section, if the student, or in the case of a PLUS loan the parent borrower, authorizes the institution to retain the excess funds to assist the student in managing those funds. If an institution chooses to hold excess student funds, the institution—

* * * * *

(c) * * *

(2) Except as provided in paragraph (c)(3) of this section, the earliest an institution may directly pay, or credit the account of an enrolled student with title IV, HEA program funds, or in the case of a PLUS Loan pay the parent borrower is—

(i) 10 days before the first day of a payment period or period of enrollment, as applicable; and

(ii) For second and subsequent disbursements of loan funds under the Direct Loan and FFEL programs, 10 days before the first day of a semester, term, or other period of enrollment for which that disbursement is intended.

* * * * *

(d) * * *

(1) * * *

(i) Disburse title IV, HEA program funds by initiating an electronic funds transfer as provided in paragraph (a)(2) of this section;

* * * * *

(iii) Hold excess student funds under paragraph (b)(4) of this section.

* * * * *

21. Section 668.166 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 668.166 Excess cash.

* * * * *

(c) * * *

(2) * * *

(i) Considers the institution to have issued a check on the date that the check cleared the institution's bank account, unless the institution demonstrates to the satisfaction of the Secretary that it issued the check shortly after the institution wrote the check; and

* * * * *

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

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

23. Section 674.16 is amended by revising paragraph (d) to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(d)(1)(i) The institution shall disburse funds to a student or the student's account in accordance with the provisions of § 668.165.

(ii) The borrower must sign for each advance of funds on the promissory note, except as provided in paragraph (d)(2) of this section.

(2)(i) In the case of a borrower enrolled in a study-abroad program approved for credit by the home institution in which the borrower is enrolled, the borrower may not be required to sign for any advance of funds made while the borrower is studying abroad if obtaining the borrower's signature would pose an undue hardship on the institution.

(ii) The institution shall properly document the reason for not obtaining the borrower's signature.

* * * * *