DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

RIN 1845–AA02

Student Assistance General Provisions, Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

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the Federal Stafford Loan Program (subsidized and unsubsidized), the Federal Supplemental Loans for Students Program (no longer active), the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly collectively known as the Guaranteed Student Loan Programs).

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

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to Wendy Macias, U.S. Department of Education, P.O. Box 23272, Washington, DC 20202–3272. If you prefer to send your comments through the Internet, use the following address: returntiv@ed.gov

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Wendy Macias, U.S. Department of Education, 7th and D Street, SW, ROB–3, Room 3013, Washington, DC 20202. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals website (http://ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or

groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations, over the course of several months, beginning in January.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of negotiating Committee III on the issues addressed in this package of proposed rules. Committee III was made up of the following members:

Accrediting Commission of Career Schools and Colleges of Technology
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of Cosmetology Schools
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Career College Association
Coalition of Higher Education Assistance Organizations
Education Finance Council
Legal Services Counsel (a coalition)
National Association for Equal Opportunity in Higher Education
National Association of College and University Business Officers
National Association of Graduate/Professional Students
National Association of Independent Colleges and Universities
National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition)
National Association of State Universities and Land-Grant Colleges
National Association of Student Financial Aid Administrators
National Direct Student Loan Coalition
The College Board
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
US Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document, except for the proposed implementation of the ''50% discount'' on Title IV, HEA program grant funds that a student must return in § 668.22(h)(3)(ii).

Background

Section 485 of the Higher Education Amendments of 1998, Public Law 105–244, enacted October 7, 1998 (the 1998 Amendments) substantially revised the requirements of section 484B of the Higher Education Act of 1965, as amended (the HEA).

Prior to the 1998 Amendments, section 484B required all schools participating in the Title IV, HEA programs to use specific refund policies when a student who receives Title IV, HEA program funds ceases attendance. The refund policies determined the amount of institutional charges that an institution had earned when a student withdrew, and the amount that was unearned and had to be refunded. In addition, section 485(a) of the HEA specified an order of return of unearned funds from all sources of financial aid, not just the Title IV, HEA programs.

Under the 1998 Amendments, section 484B of the HEA does not dictate an institutional refund policy. Instead, section 484B prescribes the amount of Title IV, HEA program assistance a student has earned as of the time he or she ceases attendance. The amount of Title IV, HEA program assistance earned is based on the amount of time the student spent in academic attendance; it has no relationship to the student's incurred institutional charges.

Because section 484B now deals with only the earning of Title IV, HEA program funds, the order of return of unearned funds no longer includes funds from sources other than the Title IV, HEA programs.

The new requirements do not prohibit an institution from developing its own refund policy or complying with refund policies required by outside agencies.

Summary of Proposed Changes

A summary of the proposed changes to the regulations to implement these statutory changes and issues on which the Secretary particularly invites comments follows.

Section 668.22(a) General

The statute requires that if a recipient of Title IV grant or loan funds withdraws from an institution after beginning attendance, the amount of Title IV, HEA program assistance earned by the student must be determined. If the amount the student was disbursed is greater than the amount the student earned, unearned funds have to be returned. If the amount the student was disbursed is less than the amount the student earned, the student is eligible to receive a late disbursement in the amount of the earned aid that the student had not received.

At the negotiated rulemaking sessions, the Department's negotiator stated the Department's belief that this change to the statute makes clear that Title IV, HEA program funds are awarded to a student under the assumption that the student will attend an institution for the entire period for which the assistance is awarded. When a student ceases academic attendance prior to the end of that period, the student may no longer be eligible for the full amount of Title IV, HEA program funds that the student was originally scheduled to receive.

Title IV Grants and Loans

The statute requires that the calculation of earned Title IV, HEA program assistance include all Title IV grant and loan funds that were disbursed or that could have been disbursed to a student. The statute specifies that Federal Work-Study (FWS) funds are not included in the calculation. These proposed regulations would clarify when Federal Supplemental Educational Opportunity Grant (FSEOG) program funds should and should not be included in the calculation.

The committee agreed that only funds that are clearly Title IV, HEA grant or loan funds must be included in the calculation. These proposed regulations would exclude from the calculation the non-Federal share of FSEOG awards when an institution meets its FSEOG matching share by either the individual recipient method or the aggregate method. In other words, if an institution meets its matching share requirement by putting funds in the FSEOG fund (otherwise known as the fund-specific matching method), those funds must be included in the calculation; otherwise, the non-Federal share of FSEOG awards is excluded from the calculation.

Several negotiators asked for clarification of the treatment of funds from the Leveraging Education Assistance Partnership (LEAP) program, formerly known as the State Student Incentive Grant (SSIG) program. The Department's negotiator stated the Department's view that the guidance of Dear Colleague Letter GEN–89–38, which addresses the treatment of LEAP funds when a student withdraws, is still applicable. Although not specified in the proposed regulations, this longstanding policy provides that, if a State agency specifically identifies a student's State grant as LEAP funds, the State grant funds must be considered Title IV, HEA grant funds for purposes of this calculation. If an institution does not know whether a particular student's State grant contains LEAP funds, the

grant would not have to be included in the calculation. The committee agreed that this policy facilitates the accurate identification of Federal funds and agreed that the continuation of this policy was reasonable. The Department will provide updates to the guidance of GEN–89–38 once these regulations are final.

Title IV Aid Disbursed

For consistency and administrative clarity, the committee agreed that it is necessary to identify a point in time that institutions would use for all students who withdraw to determine the amount of aid that was disbursed, since this amount is critical to determining if a return of Title IV, HEA program assistance is required. During negotiated rulemaking, the committee discussed whether this ''snap shot'' should occur as of the student's withdrawal date. Some negotiators pointed out that an institution sometimes inadvertently disburses funds to a student who is no longer in attendance. For example, a student drops out on Friday. Because the institution is unaware that the student is no longer in attendance, the institution makes a scheduled disbursement of aid to the student on the next Monday. Some negotiators felt that this inadvertent overpayment should be included as disbursed aid in the calculation of the amount of aid earned. They felt it was unduly burdensome to require an institution to immediately return the inadvertent overpayment since a portion of those funds may have been earned and would have to be re-disbursed. If any of the overpayment were not earned, they suggested that it could be returned in accordance with the requirements of this section for the return of unearned funds.

The committee agreed to move the snap-shot point to the date of the institution's determination that the student withdrew to allow such inadvertent overpayments to be counted as disbursed aid. (The proposed definition of the ''date of the institution's determination that the student withdrew'' is addressed in the discussion of § 668.22(l).) Institutions are expected to have the administrative capability to prevent these types of overpayments on a routine basis, particularly if funds are being paid to the student rather than credited to a student's account. A pattern or practice of making these inadvertent overpayments would be questioned in a program review. The Secretary agreed to include these overpayments in the calculation of total aid disbursed only for purposes of easing an institution's administrative burden in what should be a very limited number of circumstances. This provision would not supercede the requirements of § 668.164(b)(1) and the applicable program regulations which require that an institution may disburse Title IV, HEA program funds only if the student is enrolled for classes for the payment period and is eligible to receive those funds.

In keeping with this snap-shot approach, when a return of Title IV, HEA program funds is due, these proposed regulations would prohibit additional disbursements to the student after the date of the institution's determination that the student withdrew. The negotiators discussed the possibility of permitting an institution to adjust a student's disbursed aid by making late disbursements of aid *before* applying the requirements for determining and returning any unearned Title IV, HEA program assistance. Some negotiators felt that this could benefit the student in some cases. For example, if the institution had disbursed loan funds before the student withdrew and could have also disbursed grant funds, the institution could disburse the grant funds after becoming aware that the student withdrew in order to replace the loan funds, thereby reducing the student's loan debt.

After much discussion by the committee, it was decided that there are too many variables involved to permit institutions to make case-by-case determinations of whether post-withdrawal adjustments to a student's aid disbursement are appropriate. The committee agreed that it is not appropriate for an institution to disburse additional funds to a student or to a student's account after the institution becomes aware that the student has withdrawn, unless the institution determines that more funds were earned than had been disbursed. The Title IV, HEA program funds were made available to the student with the expectation that the student would complete the period for which the funds were provided, and that expectation is no longer present once a student has withdrawn. Before disbursing any additional funds on behalf of a withdrawn student, the proposed regulations would require the institution to determine that the student has earned those funds under the provisions of these proposed regulations.

Late Disbursements

The committee agreed that the requirements for a late disbursement due under section 484B of the HEA should be as similar as possible to the requirements under Subpart K—Cash Management of the Student Assistance General Provisions regulations. However, in some cases, the committee acknowledged that the existing cash management provisions are inappropriate in this context, or are superceded by section 484B of the HEA.

These proposed regulations contain a provision that any late disbursement due under this section must meet the current required conditions for late disbursements found in § 668.164(g)(2). This cash management provision lists the conditions that must have been met prior to the date that the student became ineligible in order for an institution to make a late disbursement. For example, the institution must have received the student's Student Aid Report (SAR) or Institutional Student Information record (ISIR) with an official expected family contribution (EFC).

The committee agreed that § 668.164(g)(1) and (g)(3) are not applicable to a late disbursement resulting from a student's withdrawal. Section 668.164(g)(1) currently states that an institution *may* make a late disbursement to a student who became ineligible solely because of a change in enrollment status. The requirements of section 484B remove the discretion that is provided in § 668.164(g)(1) for an institution to determine whether a late disbursement should be made.

Section 668.164(g)(3) currently specifies that a late disbursement must be for incurred educational costs, and must be made within 90 days of the date that the student becomes ineligible. The committee agreed that this provision was inapplicable because, as mentioned previously, the determination of the amount of Title IV, HEA program assistance that the student has earned has no relationship to incurred educational costs. The committee agreed that 90 days is a reasonable amount of time for an institution to make a late disbursement. However, the committee believed that a late disbursement made as the result of a withdrawal should be made within 90 days of the date of the institution's determination that the student withdrew, rather than within 90 days of the date that the student becomes ineligible. This proposed timeframe is addressed later in this discussion.

These proposed regulations would reflect the cash management requirements for disbursing Title IV, HEA program funds. Specifically, these proposed regulations would allow an institution to credit a student's account with a late disbursement without the

student's (or parent's, in the case of a PLUS loan) permission for current charges for tuition, fees, and room and board (if the student contracts with the institution) up to the amount of outstanding charges. For other current charges for educationally-related activities, the institution would need a student's (or parent's for PLUS loan funds) authorization to credit the student's account. These proposed regulations would allow an institution to use a student's or parent's authorization that is obtained prior to the student's withdrawal date for this purpose, so long as that authorization meets the requirements of § 668.165(b). If the institution did not obtain authorization prior to the student's withdrawal, the institution would have to obtain authorization in accordance with § 668.165(b)(2) before the institution could credit the student's account for other current charges for educationally-related activities. The institution's request for the student's or parent's authorization must make clear that if the student or parent does not give permission for the institution to credit the student's account with the Title IV, HEA program funds, these funds will be disbursed directly to the student or parent, as applicable, if the student or parent accepts the funds.

The committee considered whether to require an institution to make a late disbursement directly to a student. They also discussed whether prior authorizations from the student to permit the institution to credit his or her account would apply or if the institution would have to obtain authorization from the student after the student's withdrawal. However for consistency between this section and the existing cash management requirements, the committee decided that the proposed regulation should generally mirror the current cash management requirements for the disbursement of funds.

However, these proposed regulations would deviate from the cash management provisions in Subpart K for the disbursement of Title IV, HEA program funds by not permitting an institution to credit a student's account for any prior award year charges. This is because section 484B of the HEA specifies that earned Title IV, HEA program funds must be determined for the payment period or period of enrollment in which a student withdraws. Therefore, Title IV, HEA program funds that are earned under section 484B are earned for current charges only.

These proposed regulations would mirror the current cash management provisions in § 668.165 that require an institution to provide notice to a student, or parent in the case of a PLUS loan, when the institution credits a student's account with Direct Loan, FFEL or Federal Perkins Loan Program funds.

The statute requires that earned funds in excess of those credited to a student's account must be provided to the student. However, in recognition of the difficulty an institution may have in trying to locate a student who has ceased attendance at the institution, these proposed regulations would require that an institution would have to offer in writing to the student (or parent for PLUS loan funds) any amount of a late disbursement that is not credited to a student's account. The committee agreed that the written notification must include the information necessary for the student or parent to make an informed decision as to whether the student or parent would like to accept any of the disbursement. These proposed regulations would base the requirements for notification on the cash management requirements for an institution's notification to a student or parent when an institution credits a student's account with Title IV, HEA loan funds (§ 668.165(a)). This notification would have to be provided for late disbursements of both Title IV grant and loan funds that are available for direct disbursement. The Secretary specifically requests comments on whether the proposed timeframes discussed below, which are based on the timeframes established in the cash management regulations, are appropriate for a student who has withdrawn from school.

The committee agreed that, although a student or parent always has the option of declining a direct disbursement of loan funds by returning or not endorsing the loan check, it is essential that this option be brought to the student's or parent's attention when the student has ceased attendance and may have compromised his or her ability to earn the funds necessary to repay additional loan debt.

Under these proposed regulations, an institution would be expected to send the notification as soon as possible, but no later than 30 calendar days after the date that the institution determines that the student withdrew. The notice would have to identify the type and amount of the Title IV, HEA program funds that make up the late disbursement, and explain that the student or parent may decline all or a portion of those funds. This information must be provided to permit a student or parent to determine which funds, if any, he or she wishes to decline.

The institution would have to advise the student or parent in the notification that the student or parent would have 14 calendar days from the date that the institution sent the notification to accept a late disbursement. The notification would have to make it clear that if the student or parent did not respond to the notification within the timeframe, the institution would not be required to make the late disbursement. However, an institution could choose to make a late disbursement based on acceptance by a student or parent after the 14 calendar days. Fourteen days is the same period of time that is permitted for a student or parent to respond to a notification of the ability to cancel a loan disbursement that is credited to the student's account. The committee agreed that this period of time provides sufficient response time for a student or parent and also meets the administrative needs of the institution.

This NPRM proposes that if a student or parent submits a timely response accepting all or a portion of a late disbursement, the institution must disburse the funds within 90 days of the date of the institution's determination that the student withdrew. The committee agreed that an institution's responsibility for paying a late disbursement should start when the institution first becomes aware that a student has ceased attendance at the institution. The proposed definition of the term ''date of the institution's determination that the student withdrew'' is addressed in the discussion of § 668.22(l). The Secretary notes that the date of the institution's determination that the student withdrew is the same date that would trigger the 30-day period that the institution has for notifying the student or parent of any late disbursement available for direct disbursement. Consequently, under this proposal, the sooner an institution sends the notification to a student or parent, the more time the institution would have to make any accepted late disbursement.

The Secretary believes that it would be reasonable to permit an institution to use one notification to (1) notify the student or parent that loan funds were credited to the student's account; (2) request permission to credit the student's account for other current charges for educationally-related activities, if prior authorization had not been obtained; and (3) notify the student or parent of the availability of any remaining earned Title IV, HEA program assistance.

To keep the student or parent properly informed about the Title IV, HEA program assistance that he or she received or did not receive, this NPRM proposes that an institution must inform a student or parent in writing or electronically concerning the outcome of any late disbursement request. For example, an institution must inform a student if it will not make a late disbursement because the student's request was not received within the 14-day timeframe.

Finally, this NPRM proposes that a late disbursement, whether credited to the student's account or disbursed to the student or parent directly, must be made from available grant funds before available loan funds since it is in the best interest of the student to minimize loan debt. ''Available'' grant or loan funds refers to Title IV, HEA program assistance that could have been disbursed to the student, but was not disbursed as of the date of the institution's determination that the student withdrew. For example, if a student is due a late disbursement of $500, and the student has received $400 of $1,000 in Federal Pell Grant funds that could have been disbursed, and $1,200 of the $2,000 in Federal Stafford Loan funds that could have been disbursed, the available undisbursed funds are $600 in Federal Pell Grant funds, and $800 in Federal Stafford loan funds. Any portion of the $500 late disbursement that the institution makes must be made from the $600 in available Federal Pell Grant funds.

The following example illustrates the major principles of the proposed late disbursement procedures. Michael drops out of school on November 5. On November 10, the institution becomes aware that Michael ceased attendance. Using these proposed regulations, the institution determines that because Michael has earned $900 in Title IV, HEA program assistance that he has not received, Michael is due a late disbursement of $900. When Michael withdrew, only $600 of the $1,000 in Federal Pell Grant funds that could have been disbursed to him had been disbursed. Of the $2,000 in Federal Stafford Loan funds that could have been disbursed, only $1,200 had been disbursed. The institution determines that Michael has $50 in outstanding tuition charges and $100 in outstanding parking fines for the payment period. The institution credits Michael's account with $50 of Michael's Federal Pell Grant funds. The institution wants to use another $100 of Michael's late disbursement to cover the outstanding parking fines. However, the institution has not received permission from Michael prior to his withdrawal to credit his account for educationally-related charges other than tuition and fees and room and board.

On November 12, the institution sends a notification to Michael that states that (1) he is due a late disbursement of $900, that comprises $400 in Federal Pell Grant funds and $500 in Federal Stafford Loan funds; (2) $50 of the Federal Pell Grant funds were credited to his account for tuition charges, so Michael has a remaining potential late disbursement of $850; (3) Michael may accept all, a portion, or none of the $850; (4) the institution is obligated to make a late disbursement of funds only if Michael accepts the funds by November 26, 14 days after the institution sent the notification; (5) the institution is requesting Michael's permission to credit his account with an additional $100 of the Federal Pell Grant funds to cover his unpaid parking fines; and (6) if Michael does not authorize the institution to credit his account with the $100 of Federal Pell Grant funds, those funds will be disbursed to Michael if he chooses to accept them. The institution could have sent the notification no later than December 10; that is, 30 days after the date of the institution's determination that the student withdrew.

Michael responds on November 19. Michael authorizes the institution to apply $100 of the Federal Pell Grant funds to his outstanding parking fines. Michael accepts the remaining $250 in Federal Pell Grant funds, but declines the $500 in Federal Stafford Loan funds to minimize his overall loan debt.

The institution sends Michael a check for the $250 in Federal Pell Grant funds and a letter confirming that $100 of the Federal Pell Grant funds will be credited to his account and no additional loan funds will be disbursed. The institution has until February 8, which is 90 days from the date of the institution's determination that the student withdrew, to disburse the $250 in Federal Pell Grant funds to Michael and to credit his account with the $100 of Federal Pell Grant funds to cover his outstanding parking fines.

Section 668.22(b) Determining a Student's Withdrawal Date at an Institution That Is Required To Take Attendance

These proposed regulations would limit the definitions of withdrawal date in § 668.22(b) and (c) to the determination of the amount of Title IV, HEA program assistance that a student has earned upon withdrawal. An institution would not be required to use these withdrawal dates for their own institutional refund policies or for any other purpose. The committee agreed that this approach is consistent with the view that an institution's refund policy and other academic procedures are separate from these new procedures for determining the amount of Title IV, HEA program assistance earned when a student withdraws.

This proposed definition of withdrawal date (and the proposed definition of withdrawal date in § 668.22(c)) is for purposes of determining the amount of aid a student has earned. It is not necessarily the date that ''starts the clock'' for the return of the Title IV, HEA program funds by the institution. In § 668.22(j), this NPRM proposes a timeframe, beginning on the date of the institution's determination that the student withdrew, for the return of unearned Title IV, HEA program funds. The term ''date of the institution's determination that the student withdrew'' is discussed under § 668.22(l).

Last Date of Academic Attendance

Section 484B(c)(1)(B) of the HEA provides that, for institutions that are required to take attendance, the day the student withdrew is determined by the institution from the institution's attendance records. These proposed regulations would define this withdrawal date as the last date of academic attendance, as determined by the institution from its attendance records.

The committee discussed whether the statute could be interpreted to allow an institution to use a student's last date of attendance from the institution's attendance records as a *basis* for determining the student's withdrawal date, rather than as the actual withdrawal date. For example, if an institution's records show that a student's last date of academic attendance is November 15, but the institution is not aware that the student left until November 22, the institution might use November 22 as the student's withdrawal date. One negotiator felt that this approach was more equitable because it would take into account costs that are incurred by the student after the student's last date of attendance.

At the negotiated rulemaking sessions, the Department's negotiator made clear that the Department's view is that the goal in defining a student's withdrawal date is to identify the date that most accurately reflects the point when the student ceased academic attendance, and that this goal is best met by using the student's last date of academic attendance. The amount of Title IV, HEA program assistance that is

earned is a reflection of the amount of time a student spent in academic attendance, not a reflection of institutional costs that are incurred by the student. The committee agreed to define the withdrawal date for an institution that is required to take attendance as the last date of academic attendance as determined by the institution from its attendance records. Thus, in the example just cited, the withdrawal date would be November 15, not November 22.

Required To Take Attendance

At the negotiated rulemaking sessions, the committee discussed whether an institution that elects to take attendance should be considered an institution that is required to take attendance for purposes of calculating the amount of Title IV, HEA program assistance when a student withdraws. The committee decided that only an institution that is required to take attendance by an outside entity would be considered an institution that is required to take attendance. Examples of outside agencies that may require an institution to take attendance are an institution's accrediting agency or an institution's state licensing agency.

At the negotiated rulemaking sessions, the Department's negotiator also suggested that an institution that is required to take attendance for even a portion of the payment period or period of enrollment should be considered an institution that is required to take attendance. Some negotiators thought that the Department's interpretation was too restrictive. The negotiators cited an example in which an institution's State agency requires the institution to take attendance for the first two weeks of a program to establish a census of students. The negotiators did not believe that attendance records for census purposes would be appropriate for determining a student's withdrawal date. For this reason, the committee agreed that the proposed regulations should not include a reference to institutions that are required to take attendance for only a portion of the period. The Secretary requests comment on whether an institution that is required to take attendance for a longer portion of the payment period or period of enrollment should be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date under these proposed regulations. For example, should an institution that is required to take attendance just beyond the 60 percent point of the period (the point at which the student would earn 100 percent of his or her Title IV, HEA program assistance) have to use its attendance records to determine a student's withdrawal date?

Student Does Not Return From a Leave of Absence

The committee agreed that if a student does not return to the institution at the expiration of an approved leave of absence, the most appropriate withdrawal date for the student is also the last date of academic attendance as determined by the institution from its attendance records. Leaves of absence are addressed in the discussion of proposed § 668.22(d).

Section 668.22(c) Determining a Student's Withdrawal Date at an Institution That Is Not Required To Take Attendance

As mentioned in the discussion of proposed § 668.22(b), this NPRM proposes that the definitions of withdrawal date in §§ 668.22(b) and (c) apply only to the determination of the amount of Title IV, HEA program assistance that a student has earned upon withdrawal.

The statute lists four types of withdrawal situations for students who withdraw from institutions that are not required to take attendance and defines a withdrawal date for each type. The four situations are: (1) the student began the withdrawal process prescribed by the institution; (2) the student otherwise provided official notification to the institution of his or her intent to withdraw; (3) the student leaves without beginning the institution's withdrawal process or otherwise providing official notification of his or her intent to withdraw (an ''unofficial withdrawal''); and (4) the student does not return to the institution by the expiration of a leave of absence. In addition, the statute contains a ''special rule'' definition of withdrawal date for withdrawals that occur because of circumstances that are beyond the student's control.

Last Date of Attendance at an Academically-Related Activity

The statute does not specifically allow an institution to use an earlier or later date than those described above, except in the case of a student who withdraws without providing official notification, in which case the midpoint is the withdrawal date (situation number 3, discussed above). In such cases, the statute allows an institution to document and use a date that is later than the midpoint of the period. However, as stated previously, the Secretary believes that a student's withdrawal date should reflect as accurately as possible the point when the student ceased academic attendance. The Secretary also believes that an institution should base its determination of that point on the best information available. Therefore, the committee agreed that these proposed regulations should allow an institution that is not required to take attendance always to be able to use a student's last date of attendance at an academically-related activity, as documented by the institution, as the student's withdrawal date, in lieu of the withdrawal dates listed above. Thus, if a student begins the institution's withdrawal process or otherwise provides official notification of his or her intent to withdraw and then attends an academically-related activity after that date, the institution would have the option of using that last actual attendance date as the student's withdrawal date provided that the institution documents that the student attended the activity. Similarly, an institution could choose to use an earlier date if it believes the last documented date of attendance at an academically-related activity is a more accurate reflection of the student's withdrawal date than the date on which that student began the institution's withdrawal process or otherwise provided official notification of his or her intent to withdraw.

The concept of using a last date of attendance at an academically-related activity as a student's withdrawal date is a longstanding one for the Title IV programs. Consistent with this longstanding policy, the proposed regulations would not require an institution to take class attendance in order to demonstrate academic attendance for this purpose. The regulations would define ''academically-related activity'' and list several examples of activities that meet the definition. An institution would be permitted to use documentation of a student's attendance at other activities if those activities met the definition of an academically-related activity.

An institution would be responsible for determining that the activity that the student attended is, in fact, academically-related. The committee agreed that an institution has demonstrated this responsibility if an employee of the school confirms that the activity is academically-related. The Secretary does not consider proof that a student is living in institutional housing nor proof that a student is participating in a student organized study group to be proof of academic attendance.

The Secretary notes that activities that meet this definition of an academically-related activity would not necessarily count as instructional time for purposes

of the ''12-hour rule'' found in the definition of ''academic year'' in § 668.2(b)(2) and in the definition of an eligible program in § 668.8(b).

Withdrawal Process Prescribed by the Institution

During negotiated rulemaking, the committee discussed whether to regulate the concept of ''began the withdrawal process.'' Some negotiators felt that the statute gave the institutions discretion to define the beginning of their own withdrawal procedure. The committee agreed to leave the definition of this term up to each institution. The Secretary notes that section 485(a)(1)(F) of the HEA, as modified by the 1998 Amendments, requires an institution to make available to students a statement of the requirements for officially withdrawing from the institution. The Secretary expects an institution to identify the beginning of its process as a part of this information. The Secretary also expects an institution to be able to demonstrate consistent application of its process, including its determination of the beginning of the process.

Official Notification

These proposed regulations would define ''official notification to the institution.'' The committee agreed that ''official notification to the institution'' occurs when a student notifies an office of the institution of his or her intent to withdraw. However, the committee noted that it could be administratively burdensome for an institution to have to track withdrawal notifications that could be made to any unspecified office of the institution. Therefore, these proposed regulations would allow an institution to designate the office or offices that a student must notify in order for the notification to count as official notification. An institution would have to designate at least one office for this purpose. For example, an institution could designate a dean's, registrar, or financial aid office.

Under these proposed regulations, official notification from the student could be written or oral. Under this proposal, acceptable notification would include notification by a student via telephone, through a designated web site, or notification that is provided orally in person. If provided orally, the Secretary would expect the institution to document the conversation with the student.

Resolving Instances Where Student Triggers Two Dates

During the negotiations, the Department's negotiator noted that a student might both begin the institution's withdrawal process and otherwise provide official notification to the institution of his or her intent to withdraw. For example, on November 1, a student calls the institution's designated office and states his or her intent to withdraw. Later, on December 1, the student begins the institution's withdrawal process by submitting a withdrawal form. The Department's negotiator stated that it is the Department's view that the earlier date more accurately reflects when the student withdrew. Ultimately, the committee agreed that if both dates are triggered, the earlier date would be the student's withdrawal date.

Several negotiators felt that the institution should have the discretion to choose the more appropriate date. The negotiators felt it was unfair to require the earlier date if the student continued to attend the institution after the first notification. Although the proposed regulations would permit an institution to document a later ''last date of academically-related attendance,'' negotiators felt that in this situation it was unreasonable to require the institution to confirm and document the later attendance. The committee agreed to extend negotiations beyond the five originally-scheduled sessions in order to continue to address this issue (and the issue of the determination of the amount of unearned aid to be returned). The committee agreed that the extension was necessary to continue its attempts to resolve differences between the Department's negotiator and other negotiators. After extensive discussions and consideration of several alternatives, the committee ultimately agreed to the original interpretation that the withdrawal date should be the earlier of the two dates (unless the institution chooses to document another last date of attendance at an academically-related activity), in conjunction with a provision that clarifies how a student's rescission of his or her notification of intent to withdraw would be treated (discussed below).

Student Does Not Return From a Leave of Absence

This NPRM proposes that if a student does not return to the institution at the expiration of an approved leave of absence, the student's withdrawal date is the date that the student began the leave of absence. The committee agreed that the date that the student began the leave of absence most accurately reflects the point when a student who does not return from the leave ceases academic attendance. Leaves of absence are addressed in the discussion of proposed § 668.22(d).

Circumstances Beyond the Student's Control

The committee's view was that the special rule that defines a withdrawal date for students who withdraw due to circumstances beyond the student's control should apply in two circumstances: (1) a student who would have provided official notification to the institution of his or her intent to withdraw was prevented from doing so due to those circumstances; and (2) a student withdrew due to circumstances beyond the student's control and a second party provided notification of the student's withdrawal on the student's behalf.

The committee agreed that for such students the institution should determine the withdrawal date that most accurately reflects when the student ceased academic attendance due to the circumstances beyond the student's control. This date would not necessarily have to be the date of the occurrence of the circumstance beyond the student's control. For example, if a student is assaulted, he or she may continue to attend school, but ultimately not be able to complete the period because of the trauma experienced. Because the student's withdrawal was the result of the assault, the withdrawal date would be the date that the student actually left the institution, not the date of the assault. The Secretary would expect the institution to document that the student left at the later date because of issues related to the assault.

Rescission of Intent To Withdraw

These proposed regulations would specify how a student's rescission of an intent to withdraw would affect the withdrawal date. A student's rescission would be valid only if the student attends through the end of the payment period or period of enrollment. As part of the rescission notification, a student would have to attest that he or she was continuing academic attendance and that he or she intends to complete the period. If the student did not complete the payment period or period of enrollment after the rescission, the withdrawal date would be the date when the student first provided notification to the school or began the withdrawal process, unless an institution chooses to use a documented last date of attendance at an academically-related activity as the student's withdrawal date.

This language was added to the proposed regulations to clarify how a

student's rescission would be treated. The negotiation of this proposed regulatory language occurred through discussions within a subgroup of the committee, including the Department's negotiator, after the final negotiating session (but prior to the reaching of consensus). Although the committee reached consensus on the proposed regulatory language, the Secretary wishes to explain the reasons for this provision. The Secretary is particularly concerned with a situation in which a student notified the institution of an intent to withdraw, decided to continue to attend the school, and then withdrew without providing further notification. The Secretary believes that a student who provides official notification of his or her intent to withdraw and actually withdraws should never be treated as a student who left the institution without providing notification, even if there was a rescission of the first notification.

Likewise, the Secretary does not believe that a student who provided notification, decided to continue to attend the school, and then provided subsequent notification of an intent to withdraw should have earned aid determined based on the later notification date.

The Secretary is concerned that some students, either on their own or in response to encouragement by the institution, would attend for a short period of time after their first notification and then drop out or provide a second notification in order to increase artificially the amount of Title IV, HEA program assistance earned.

Acceptable Documentation

During the negotiated rulemaking sessions, the committee considered whether to specify in the regulations what documentation would be acceptable to support an institution's determination of a student's withdrawal date. Several of the negotiators felt that institutions should have the flexibility to determine the type of documentation that would best support their determination of the student's withdrawal date. The negotiating committee agreed that acceptable documentation should not be delineated in the regulations. However, an institution would still be required to document all withdrawal dates and maintain the documentation. The committee agreed that it is reasonable to expect an institution to have such documentation available as of the date of the institution's determination that the student withdrew. The proposed definition of the ''date of the institution's determination that the student withdrew'' is addressed in the discussion of § 668.22(l).

Unapproved Leave of Absence

The Secretary notes that neither the statute nor the proposed regulations specify a withdrawal date for a student who takes an unapproved leave of absence. The Secretary requests comment on whether such a date should be specified in the regulations.

Section 668.22(d) Treatment of Leaves of Absence

The statute provides that a leave of absence must meet certain conditions to be counted as a temporary interruption in a student's education, rather than as a withdrawal. If a leave of absence does not meet the conditions, the student is considered to have ceased attendance at the institution (and therefore to have withdrawn from the institution) and the requirements of section 484B of the HEA would apply.

For purposes of § 668.22, a leave of absence refers to circumstances in which a student is not in academic attendance for a period for which academic attendance is scheduled as part of the student's program. It does not refer to non-attendance for a scheduled break in a student's program.

These proposed regulations refer to a leave of absence that does not have to be considered a withdrawal as an ''approved leave of absence.'' The statute gives an institution discretion in determining whether to treat an approved leave of absence as a withdrawal. That is, a student's leave of absence may meet all the requirements for an approved leave of absence, but the institution may still treat the leave of absence as a withdrawal.

The committee noted that term-based credit hour schools allow students to receive an ''incomplete'' status for coursework that can be, and is expected to be, completed within a reasonable timeframe after the term is over. For example, a student may request and receive an ''incomplete'' because the student failed to turn in an assigned paper. If a student is assigned an ''incomplete'' status but the institution determines that the student will likely complete the required coursework, the student could be considered not to have withdrawn. If the institution assigns a student a leave status other than a leave of absence as defined in these proposed regulations just to keep the student from having to re-apply the next semester, the student would be considered to have withdrawn, unless he or she was granted an approved leave of absence under the provisions of this section. The Secretary notes that under these proposed regulations, a student on an approved leave of absence must be permitted to complete the coursework he or she began prior to the leave of absence.

The Secretary specifically requests comment on whether the proposed definition of a leave of absence for purposes of this section should apply for purposes of determining whether a student's in-school status continues for Title IV, HEA program loan purposes.

Number of Leaves of Absence

The statute refers to a student who takes ''a'' leave of absence from an institution. The committee considered whether a student should be granted only one leave of absence in a 12-month period or whether the statute permits a student to take multiple leaves of absence in a 12-month period, as long as the total number of days did not exceed 180. The committee agreed that in some limited instances, it may be appropriate to permit a student to take more than one leave of absence within a 12-month period, as long as the total number of days of the leaves of absence does not exceed 180. This proposal seeks to strike a balance recognizing that it is often not in the best interest of most students to have multiple interruptions to their education, but that one leave of absence may not be sufficient to address the needs of some students. These proposed regulations do not specify the reasons for which a single leave of absence may be granted; rather, the institution would determine if the student's reason for requesting a single leave of absence is appropriate. Generally, the committee agreed that more than one leave of absence should be granted for unforeseen circumstances only. For example, an institution would be able to grant more than one leave of absence to a student who is unexpectedly called up for military-reserve duty, or for a student who meets the criteria covered under the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103–3), enacted February 5, 1993.

The circumstances that are covered under the FMLA, as applied to students, are:

- Birth of a son or daughter of the student and the need to care for that son or daughter (for 12 months beginning from the date of birth of the child),
- Placement of a son or daughter with the student for adoption or foster care (for 12 months beginning on the date of the placement),
- Need to care for the student's spouse, or a son, daughter, or parent, if the spouse, son, daughter, or parent has a serious health condition, and

• Serious health condition that makes the student unable to function as a student.

These proposed regulations would use definitions of terms taken from the FMLA and its implementing regulations (29 CFR part 825). The statutory language, with links to the implementing regulations, can be found on the Internet at http://www.dol.gov/dol/esa/public/regs/statutes/whd/fmla.htm

The Secretary specifically requests comments on other categories that commenters believe would warrant the granting of more than one approved leave of absence in a 12-month period.

The Secretary believes that it would be appropriate for a student to make only one request for multiple leaves of absence when those leaves are all requested for the same reason. For example, a student who will be receiving multiple chemotherapy treatments over the course of the student's enrollment could submit one request to cover the recovery time needed for each session.

12-Month Period

The statute requires that the leave of absence not exceed 180 days in any 12-month period. This NPRM proposes that the 12-month period would begin on the first day of the student's leave of absence. This proposal reflects the view that the use of a calendar year or academic year would not be appropriate. For example, if the use of a calendar year was permitted, an institution could grant one leave of absence of 180 days from July to December of one year and another leave of absence for 180 days from January to June of the following year. The committee did not believe that it would be appropriate to give a student more than 180 days on a leave of absence within any 12-month period.

Reasonable Expectation of Return

These proposed regulations set conditions for an approved leave of absence in addition to the minimum conditions required by the statute. The committee agreed that a leave of absence is an approved leave of absence if there is a reasonable expectation on the part of the institution that the student will be able to return to the institution. It was agreed that it is necessary to specify this condition in the regulations to prevent an institution from granting a student a leave of absence merely to delay the return of unearned Title IV, HEA program funds.

No Additional Charges

This NPRM proposes that an approved leave of absence may not involve additional charges by the institution. A leave of absence is a temporary break in the student's attendance during which, for purposes of determining if the provisions of this proposed rule apply, the student is considered to be enrolled. Since students are not assessed additional charges for continuing enrollment, any additional charges to a student, even *de minims* re-entry charges, indicate that the student is not considered to be on an approved leave of absence.

Completion of Coursework Upon Return

This NPRM proposes that in order for a leave of absence to be an approved leave of absence, the institution must permit the student to complete the coursework that he or she began prior to the leave of absence. Approved leaves of absence are viewed as temporary interruptions in a student's attendance. Therefore, when a student returns from a leave of absence, the student should be continuing his or her education where he or she left off.

Formal Policy

The statute provides that in order for a leave of absence not to be treated as a withdrawal, the institution has to have a formal policy regarding leaves of absence, the student has to follow the institution's policy in requesting a leave of absence, and the institution has to approve the student's request in accordance with the institution's policy.

For documentation purposes, these proposed regulations would further define a ''formal policy'' as one that requires a student to provide a written, signed, and dated request for a leave of absence prior to the leave of absence, unless unforeseen circumstances prevent the student from doing so. The committee agreed that, in most cases, it is possible to obtain a written request from a student prior to a leave of absence. However, in some cases, a student will not be able to provide a written, signed, and dated request prior to the beginning of the leave of absence. For example, if a student was injured in a car accident and needed a few weeks to recover before returning to school, the student would not have been able to request the leave of absence in advance. The regulations would permit the institution to grant the leave of absence if the institution documents its decision and collects the request from the student at a later date.

In addition, these proposed regulations would require that the institution put the policy in writing and publicize it to students. Because of the consequences of withdrawal, the committee agreed it is essential to provide students with the information they need to request and receive approval for an approved leave of absence. This requirement would be met by including the policy with the one-time dissemination of other consumer information under § 668.41.

Section 668.22(e) Calculation of Amount of Title IV, HEA Program Funds Earned by the Student

These proposed regulations would repeat (with minor changes for clarity) the statutory language that delineates the calculation of the amount of Title IV, HEA program funds earned, with the modifications discussed below.

The most significant modification is the addition of language in the calculation of the percentage earned to make clear that a student in a clock hour program cannot earn 100 percent of his or her Title IV, HEA program assistance unless the student actually completes more than 60 percent of the total clock hours in the payment period or period of enrollment. This is addressed in detail in the discussion of the percentage of the payment period or period of enrollment completed for a clock hour program in § 668.22(f).

Unearned Title IV Assistance To Be Returned

These proposed regulations would clarify the intent of the statute by defining the ''total amount of unearned Title IV assistance to be returned.'' The statute defines the percentage and amount of Title IV, HEA program assistance that is unearned. The statute requires that the unearned amount must be returned to the Title IV, HEA programs. However, the statute defines the total amount unearned by applying the percentage unearned to the total amount of program assistance that was disbursed or that could have been disbursed.

Negotiators pointed out that in situations in which all the Title IV, HEA program assistance that could have been disbursed was *not* disbursed, the only amount that needs to be returned is the amount of disbursed aid that exceeds the amount of earned aid. For example, a student's total ''disburseable aid'' (aid that was disbursed or could have been disbursed) is $3,250. It includes a $1,500 Pell Grant and $1,750 in a subsidized Stafford loan. When the student withdraws, the full amount of the loan ($1,750) has been disbursed, but only $1,000 of the Pell Grant has been disbursed. The total Title IV, HEA

program assistance that is earned by the student is calculated by multiplying total disburseable aid ($3,250) by the percentage earned. Assuming a percentage earned of 25%, the total earned Title IV, HEA program assistance would be $813 ($3,250×25%). If all the disbursable aid had been disbursed, the total unearned amount of Title IV, HEA program assistance of $2,437 ($3,250 − $813) would have to be returned to the Title IV, HEA programs. However, because only $1,000 of the $1,500 Pell Grant was actually disbursed, only $2,750 in Title IV, HEA program assistance was actually disbursed, so only $1,937 would have to be returned to the Title IV, HEA programs. This amount, $1,937, is the amount actually disbursed that exceeds the amount of Title IV, HEA program assistance that was earned by the student ($2,750 − $813).

The committee agreed that replacing total unearned aid with the total amount of unearned Title IV assistance to be returned clarifies that the only amount that needs to be returned is the amount of aid that was actually disbursed that exceeded the amount of earned aid.

Payment Period or Period of Enrollment

For students who withdraw from term-based educational programs, this NPRM proposes that an institution would always have to determine the treatment of the student's Title IV, HEA program assistance on a payment period basis. For students who withdraw from a non-term based educational program, the institution would have the choice of determining the treatment of the student's Title IV, program assistance on either a payment period basis or a period of enrollment basis. The committee believed that allowing an institution a choice of a period for non-term based educational programs only is consistent with the conference report language for the 1998 Amendments. The conference report states that the choice of using a period of enrollment, rather than a payment period, was added ''to provide that the earned amount may be the proportion of the period of enrollment at non-term based institutions.'' The Department's negotiator stated in negotiated rulemaking the Department's view that, generally, a payment period is the most appropriate period for most educational programs, including non-term based programs, because Title IV, HEA program funds are disbursed on a payment period basis. However, the committee recognized that in some cases, for an institution with non-term based programs, a period of enrollment may be the most appropriate period.

This NPRM proposes that an institution would have to choose either a payment period or period of enrollment for each non-term based educational program and use that period consistently for all students in the program. This provision is intended to prevent the potential for abuse that could otherwise occur if a school were permitted to choose a period on a student-by-student basis. If this were permitted, a payment period could be used when it results in the most aid earned for the students, but a period of enrollment could be used when that is the period that maximizes the amount of aid earned. For example, absent this provision, a school with a 900 clock hour program of two payment periods of 450 clock hours could choose to use payment periods for students who withdraw in the first payment period so that the point beyond 60 percent of the period (the point at which a student would earn 100 percent of his or her Title IV, HEA program assistance) occurs at hour 271. However, the institution could then choose to use the period of enrollment of 900 hours for all students who withdraw in the second payment period, so that the point beyond 60 percent for those students occurs at hour 541 of the program, rather than hour 721 (the point beyond the 60 percent point for the second payment period of 450 hours plus the first payment period of 450 hours). This approach could artificially inflate the amount of Title IV, HEA program assistance that a student has earned upon withdrawal from the institution.

The Secretary believes that the regulations implementing section 484B of the HEA should provide for accurately determining when a student ceased academic attendance and the corresponding amount of Title IV, HEA program assistance earned; not maximize that assistance. This approach requires that the same period be used for all students who withdraw from the same program.

The Secretary specifically requests comment on how the calculation of earned Title IV, HEA program assistance should be determined for students who transfer-in or re-enter an institution. For example, Matthew transfers into a 900 clock hour program. The payment periods for the program are two periods of 450 clock hours. Because of transfer credits, Matthew has only 300 hours to complete the program. Matthew withdraws from the program on the same date as Thomas, who had been in attendance since the beginning of the program. If the institution uses payment periods for determining earned Title IV, HEA program funds, what clock hours should be used to calculate Matthew's earned aid?

When discussing a non-term based institution's use of a period of enrollment, some of the negotiators pointed out that it was not possible to use the entire amount of Title IV, HEA program funds that the student would receive for the period of enrollment in the calculation if the withdrawal occurred during any payment period other than the last payment period of the period of enrollment. This is because Title IV, HEA program assistance that could have been disbursed does not include assistance that the student was not otherwise eligible to receive at the time he or she withdrew (the term ''could have been disbursed'' is addressed in the discussion of § 668.22(d)). If a student does not begin attendance in a subsequent payment period, the student is not eligible to receive Title IV, HEA program assistance for that payment period. For example, if a student withdrew in the first of two payment periods, the Title IV, HEA program assistance that the student would have received for the second payment period would not be included in the calculation of earned Title IV, HEA program assistance because the student did not begin attendance in the second payment period. Under these restrictions, the percentage of Title IV, HEA program assistance earned would be based on the period of enrollment, but that percentage would be applied only to the Title IV, HEA program funds that were disbursed or that could have been disbursed for the payment periods in which the student began attendance. The committee discussed this issue and acknowledged that using the full period of enrollment for determining the percentage of Title IV aid earned, but a shorter period (payment period(s)) for calculating the amount of Title IV aid that was disbursed or could have been disbursed, produces an ''apples and oranges'' situation and limits the desirability for an institution to choose to use a period of enrollment when calculating the amount of Title IV, HEA program assistance earned.

Some negotiators believed that the statute's use of aid ''awarded'' in some places allows an institution to use the amount awarded for the entire period of enrollment in the determination of the earned amount of Title IV, HEA program funds. The Department's negotiator pointed out that the statutory language that delineates how earned Title IV, HEA program assistance is calculated requires that the percentage earned be applied to ''the total amount of such grant and loan assistance that was

disbursed (and that could have been disbursed).'' As discussed above, aid that ''could have been disbursed'' does not include assistance that the student was not otherwise eligible to receive at the time of withdrawal.

The committee also discussed how institutional charges incurred for a payment period would be determined when the institution charges for a longer period. This issue is addressed in the discussion of proposed § 668.22(f).

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

The percentage of the payment period or period of enrollment completed determines the percentage of aid earned by the student.

Credit Hour Programs

The statute defines the calculation of the percentage of the period completed for a credit hour program as the number of calendar days completed in the payment period or period of enrollment divided by the total number of calendar days in the same period, as of the day the student withdrew. The simplest approach would be to include all days in the period in the total number of calendar days. However, the committee agreed to exclude extended breaks when the institution had not scheduled academic attendance for the student.

Accordingly, this NPRM proposes that the total number of calendar days in a payment period or period of enrollment includes all days within the period, except for scheduled breaks of at least five consecutive days. Days in which the student was on an approved leave of absence would also be excluded. Scheduled breaks of at least five consecutive days and days in which a student was on an approved leave of absence would be excluded from both the number of calendar days completed in the payment period or period of enrollment (the numerator), and from the total number of calendar days in the same period (the denominator).

Clock Hour Programs

The statute provides two calculations for determining the percentage of the period completed for a student who withdraws from a clock hour program. The denominator, the total number of clock hours in the payment period or period of enrollment, is the same for both calculations. The numerator is the number of clock hours completed by the student in that period as of the day the student withdrew, or, if the clock hours completed are not less than a certain percentage, it is the hours that were *scheduled* to be completed by the student in the period. The statute specifies that this percentage is to be determined by the Secretary in regulations.

The determination of this percentage was the subject of intense negotiations by the committee. The NPRM is proposing to establish an attendance threshold that will permit students who withdraw from clock hour institutions to earn Title IV, HEA program funds based upon the hours that were scheduled to be completed at the time they withdrew, so long as the actual hours attended were at least 70 percent of the hours that were scheduled to have been completed at the time they withdrew.

The Department's negotiator initially proposed that 90 percent be the measure used to determine whether scheduled hours could be used. Some negotiators argued for an alternative application of this portion of the law, under which a student would be paid for all scheduled hours at the time the student withdrew, provided that a specified minimum percentage of the total hours in the program were completed. Some negotiators described this measure as a type of ''cooling-off'' period for a student because the student would be paid only for completed hours during the early part of the payment period. For example, if the threshold were 10 percent, any student completing at least 45 hours of a 450 hour payment period would be paid for the hours scheduled to be completed at the time the student withdrew.

The Department's negotiator pointed out that this proposal would permit students with very low attendance rates to be paid a bonus for the scheduled hours they had not attended simply because the student managed to complete the relatively low number of hours during the time the student was enrolled. A student completing the 10 percent minimum number of hours would therefore continue earning Title IV, HEA program funds without further class attendance until he or she withdrew or was terminated by the institution. Some of the negotiators felt that this was not likely to happen because satisfactory academic progress requirements and accrediting agency oversight would limit the potential for abuse. The committee used a workgroup to focus on these issues, and the workgroup and committee reached agreement on the use of the 70 percent proposal.

Under this proposal, students who complete at least 70 percent of their scheduled hours before they withdraw would earn Title IV, HEA funds based upon their total scheduled hours for the time they were enrolled, rather than the hours the student completed. However, only students who actually completed more than 60 percent of the hours in the payment period or period of enrollment would earn 100 percent of the Title IV, HEA program funds. For example, if a student withdrew after completing 230 hours in a 450 clock hour payment period, and the student was scheduled to have completed 280 hours of the program at the time he or she withdrew, that student would have completed 82 percent of the scheduled hours (230/280) for the time he or she was enrolled. In this case, the student met the attendance threshold of 70 percent and, therefore, the institution would use the 280 scheduled hours, rather than the 230 hours that were actually completed, in the calculation of the percentage the period completed. If the same student had completed 230 clock hours while he or she was scheduled to have completed 335 hours at the point of withdrawal, the student's attendance rate would have been less than 70 percent (230/335=69 percent) and only the 230 completed hours would be used in the calculation.

The committee also considered an alternative proposal whereby the point for earning all of the Title IV, HEA program assistance (that is, the point beyond the 60 percent point) would have been based upon scheduled clock hours rather than completed clock hours. This alternate method was ultimately rejected by the committee because it would have effectively lowered the threshold for earning 100 percent of the aid by coupling it with the attendance percentage, and would have resulted in a student being able to earn 100 percent of the Title IV, HEA program assistance for a payment period or period of enrollment by exceeding as little as 42 percent of the total hours (60 percent $\times$ 70 percent = 42 percent).

The proposal in the regulations reflects the determination that the trigger for earning the last 40 percent of the Title IV, HEA program funds for a payment period or period of enrollment should be tied to the actual hours completed. In the example above in which the institution determined that the student may be paid for 280 scheduled hours in the 450 clock hour payment period, the percentage of the payment period completed would be 62 percent (280/450), even though the student actually completed only 51 percent of the total hours (230/450). However, the student would not earn 100 percent of the Title IV, HEA program funds because the 230 clock hours completed were less than 60 percent of the 450 clock hours in the

payment period, even though the 280 scheduled clock hours at the time of withdrawal were above the 60 percent point. The student would earn 62 percent of the Title IV, HEA program funds that were disbursed or that could have been disbursed.

The issue of whether excused absences should be counted as completed hours was not discussed with the committee during the negotiated rulemaking sessions. The Secretary believes that excused absences should not be counted as completed hours. The Secretary believes that the 70 percent scheduled to completed ratio measure is an extremely tolerant threshold and no additional adjustments should be made. The Secretary specifically requests comments on the treatment of excused absences.

The Secretary specifically requests comments on whether the proposed definitions of the percentage of the payment period or period of enrollment completed create problems for non-term credit hour programs, correspondence programs, or non-traditional programs.

Section 668.22(g) Responsibility of an Institution To Return Unearned Title IV, HEA Program Funds

When there is an amount of Title IV, HEA program assistance to be returned, the statute requires that the responsibility for the return be shared by the institution and the student. The statute defines the amount due from the institution as the lesser of the total unearned amount of aid, or the institutional charges incurred by the student multiplied by the percentage of unearned Title IV, HEA program assistance.

The committee considered whether an institution should be allowed to decide whether the institution or the student should return funds first. Some negotiators believed that this would allow the institution to minimize some students' immediate grant overpayment when a student has unearned Title IV, HEA program funds that must be returned. They also noted that many students will not have the immediate cash to repay the grant overpayment and will be prevented from receiving additional Title IV assistance if the students return to school. They further noted that if the student was permitted to return Title IV, HEA program funds before the institution, the student would be responsible for returning funds to the loan, which he or she would pay back over time in accordance with the promissory note, as specified in the statute. The institution would pay off, or pay down, the student's grant overpayment. These negotiators argued that a grant overpayment is more of a hardship for a student because there is a more immediate demand for repayment.

The Department's negotiator noted that the statute provides that the student's responsibility is the amount of unearned Title IV, HEA program funds minus the amount that the institution is required to return. The Department's negotiator explained that the statute therefore requires the student's repayment obligation to be determined after the institution's share is calculated. The committee ultimately agreed that the institution is required to return funds before the student. As a result, because the institution will return loan funds first, in some cases, a student must return grant funds in an overpayment situation rather than paying back loans in accordance with the terms of the promissory note. The Department believes this result is also consistent with the law, because the 50 percent ''discount'' of the grant repayment (discussed under § 668.22(h)) is available only to students and could not be used if the institution were required to return excess grant funds.

Although the statute and these proposed regulations use the term ''return of funds,'' the committee also agreed that an institution was not required to actually return its share before the student; rather, the amount of assistance that the institution is responsible for returning must be allocated between the Title IV, HEA program accounts first.

Institutional Charges

On January 7, 1999, the Secretary published guidance on the definition of institutional charges for the purpose of refund calculations. This guidance was published in the form of a policy bulletin on the Education Department's Information for Financial Aid Professionals (IFAP) web site. The guidance was initially developed to address requests for clarification of the definition of institutional charges as used in the pre-1998 Amendments refund requirements.

Some of the negotiators noted that in the pre-1998 Amendments requirements in section 484B of the HEA, refund provisions are used to determine the portion of institutional charges that an institution must return when a student withdraws. In the 1998 Amendments, institutional charges are used only to determine the portion of unearned Title IV, HEA program assistance that the institution is responsible for returning. Institutional charges do not affect the amount of Title IV, HEA program assistance that a student earns when he or she withdraws.

Some negotiators suggested that, because the impact of institutional charges is different under the new law, the guidance on the definition of institutional charges should be modified. The Secretary agreed to revisit the current guidance to determine whether revisions would be appropriate. Until further guidance is issued, the guidance of the January 7, 1999, policy bulletin remains in effect.

As stated in the discussion of § 668.22(e), for students who withdraw from a non-term based educational program, the institution would have the choice of determining the treatment of the student's Title IV, HEA program assistance on either a payment period basis or a period of enrollment basis. The committee also considered the situation in which an institution chooses to calculate the treatment of Title IV, HEA program assistance on a payment period basis for a non-term program, but the institution charges for a period longer than the payment period (most likely the period of enrollment) and there may not be a specific amount that reflects the actual institutional charges incurred by the student for the payment period.

These proposed regulations would address this issue by defining the institutional charges incurred by the student for the payment period when the student is charged for a period that is longer than the payment period. In general, a pro-rated amount of institutional charges for the longer period would most accurately reflect the charges incurred by the student for the payment period. However, the committee agreed that if an institution has retained Title IV, HEA program funds in excess of the pro-rated amount to cover institutional charges, then those charges are attributable to the payment period and are a better indicator of the student's incurred institutional charges. For example, institutional charges are $8,000 for a non-term based program that spans two payment periods of 450 clock hours each. The institution chooses to calculate the treatment of Title IV, HEA program funds on a payment period basis. A student withdraws in the first payment period. The pro-rated amount of institutional charges for each payment period is $4,000. However, the institution has retained $5,000 of the Title IV, HEA program funds for institutional charges for the payment period. Therefore, the institutional charges for the payment period are $5,000.

Several negotiators asked the Department to clarify the meaning of the

phrase, ''institutional charges incurred by the student.'' For purposes of this section, ''institutional charges incurred by the student'' would be charges for which the student was responsible that were initially assessed by the institution for the payment period or period of enrollment.

Section 668.22(h) Responsibility of a Student To Return Unearned Title IV, HEA Program Funds

The statute specifies that the student is responsible for all unearned Title IV, HEA program assistance that the institution is not required to return. Although this NPRM proposes that an institution must pay back any amount due to a Title IV loan program within the timeframe established in paragraph (j), the statute allows a student to pay back his or her portion of any unearned loan funds in accordance with the terms of the promissory note. In other words, the student will be repaying any unearned loan funds in the same manner that he or she will be repaying earned loan funds. These proposed regulations would not require the student to provide any additional assurances or affirmations.

The statute states that a student's unearned grant funds are an overpayment and are subject to repayment arrangements satisfactory to the institution or overpayment collection procedures prescribed by the Secretary. The negotiators reached consensus that these proposed regulations would apply the current regulatory requirements and corresponding sub-regulatory guidance for the collection of Federal Pell Grant and FSEOG overpayments for this purpose. Additional subregulatory guidance may be issued if further clarification is needed when institutions start applying these existing regulations in the return of funds context. Any future changes to these requirements will be made by proposing changes to the Federal Pell Grant and FSEOG regulations in accordance with applicable requirements of the Administrative Procedures Act.

Fifty Percent Discount

Section 484B(b)(2)(C) of the HEA states, ''a student shall not be required to return 50 percent of the grant assistance received by the student under this title, for a payment period or period of enrollment, that is the responsibility of the student to repay under this section.''

The implementation of this provision was the subject of extensive discussion among the negotiators. Because the difference between the Department's interpretation of the statute and most of the other negotiators' interpretation of the statute was so great, the committee agreed to exclude this provision from the call for consensus on the draft regulations. Because no consensus was reached on this issue, the proposed regulatory provision on this issue reflects the Secretary's view.

The Secretary interprets the statute to provide that a student does not have to repay 50 percent of the student's grant repayment amount. The Secretary believes that 50 percent of the student's grant repayment amount provides the level of relief to the student that the statute intended, while it requires a student to return a portion of the unearned grant assistance.

Some negotiators felt that the statute provided a student with a higher level of relief. These negotiators read the statute to relieve the student of 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed to the student.

The Secretary did not agree with the negotiators' reading of the statute because he believes that it is inconsistent with the conference report for the 1998 Amendments which states that this statutory provision was added to ''[reduce] by half the amount of unearned grant assistance the student is responsible for returning.''

The following example illustrates the Secretary's interpretation of the statute. When Amanda withdrew, the amount of Title IV assistance that was disbursed or that could have been disbursed was $1,000 in Federal Pell Grant funds. Total Title IV funds to be returned is $750. The institution is responsible for returning $300 to the Federal Pell Grant. Amanda is responsible for returning the balance of the unearned funds, which is $450. However, because Amanda must return these funds to a Title IV grant program, she is not required to return 50 percent of the grant assistance received that it is her responsibility to repay. Under the Secretary's proposal, Amanda would have to repay $225 to the Federal Pell Grant program (50 percent of the amount that she is initially required to repay [$450]).

If the interpretation supported by several of the negotiators was used, Amanda's repayment amount would be ''discounted'' by 50 percent of the amount of Pell Grant funds that was disbursed or that could have been disbursed, 50 percent of $1,000, which is $500. Because this discount exceeds the initial amount that Amanda is required to repay ($450), she would not have to return any funds to the Federal Pell Grant program.

Section 668.22(i) Order of Return of Title IV, HEA Program Funds

The statute specifies by program the order in which an institution and a student must return Title IV, HEA program funds. Unearned Title IV, HEA program assistance is returned first to the Title IV loan programs (first to unsubsidized loans, then subsidized, Federal Perkins, and PLUS), and then to the Title IV grant programs. This provision continues the approach of the pre-1998 Amendments requirements of section 485(a) of the HEA that a student's Title IV loan debt should be reduced first when returning funds to the Title IV, HEA programs when a student withdraws.

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

The statute does not specify a timeframe for the return of Title IV, HEA program funds. However, the committee agreed that such a timeframe should be specified in the regulations. This NPRM proposes that an institution have 30 days from the date that the institution determines that the student withdrew to return all unearned funds for which it is responsible. Under the existing refund regulations, an institution must return Title IV funds within 30 days for all Title IV, HEA program funds except for most FFEL program funds, which must be returned within 60 days. The committee agreed that it is reasonable to expect institutions to return all Title IV, HEA program funds, including all FFEL funds, within 30 days because most FFEL funds are now delivered electronically.

These proposed regulations would set a timeframe for an institution to determine the withdrawal date for a student who withdrew without providing notification to the institution. An institution would have 30 days from the earlier of (1) the end of the payment period or period of enrollment as, applicable, (2) the end of the academic year, or (3) the end of the student's educational program. These proposed regulations would mirror the provisions of the current § 668.22 to recognize that some institutions may not know about drop-outs until the institution checks its records at the end of an academic period. However, the committee agreed that a timeframe is necessary so that unearned funds will be returned within a reasonable period of time.

Section 668.22(k) Consumer Information

The 1998 Amendments made modifications to section 485(a)(F) of the

HEA to address the changes to section 484B. Section 485(a)(F) describes the consumer information that an institution must provide to its students regarding the requirements of section 484B, any refund policies that the institution uses, and the requirements for officially withdrawing from the institution. The proposed regulations implementing section 485(a)(F) are included in a separate NPRM proposing changes to Subpart D-Institutional and Financial Assistance Information for Students of the Student Assistance General Provisions. These proposed regulations for § 668.22 would cross-reference the regulations for Subpart D.

Section 668.22(l) Definitions

Aid That Could Have Been Disbursed

The statute requires an institution to calculate the amount of earned Title IV, HEA program funds by applying a percentage to the total amount of Title IV, HEA program assistance that was disbursed, or that could have been disbursed. The committee agreed that the term ''could have been disbursed'' should be defined in the regulations. The amount of Title IV, HEA program funds that could have been disbursed does not include Title IV, HEA program funds that the student was not otherwise eligible to receive at the time he or she withdrew. For example, a first-year, first-time borrower who withdraws before the 30th day of the student's program of study would not have been eligible to receive any FFEL or Direct Loan funds at the time he or she withdrew (unless the institution is exempt from the ''30-day delay'' provisions in section 428G of the HEA). Therefore, for this student, no amount of an FFEL or Direct Loan may be included in the calculation of the treatment of Title IV, HEA program assistance.

The committee agreed that the amount of Title IV, HEA program funds that could have been disbursed would not include second or subsequent disbursements of FFEL or Direct loans that are prohibited under § 668.164(g)(2)(ii). Section 668.164(g)(2)(ii) prohibits late second or subsequent disbursements of FFEL or Direct Loan funds unless the student has graduated or successfully completed the period of enrollment for which the loan was intended.

In addition, the committee agreed that Title IV, HEA program funds that could have been disbursed would not include a second disbursement of a Title IV, HEA FFEL or Direct loan that is prohibited under § 682.604(c)(7) or (8) or § 685.301(b)(5) or (6). These sections provide that an institution may not make a second disbursement of a loan for attendance in a clock hour or non-standard term credit hour educational program until the later of the calendar midpoint of the loan period or the date that the student has completed half of the academic coursework or clock hours (as applicable) in the loan period.

The committee agreed that Title IV, HEA program funds would also not include subsequent disbursements of Federal Pell Grant funds that are prohibited under § 690.75(a). Section 690.75(a) prohibits subsequent disbursements of Federal Pell Grant funds for attendance in a clock hour or non-term credit hour program until the student has completed the required clock hours or credit hours for which he or she has already been paid a Federal Pell Grant.

Period of Enrollment

For consistency, the committee agreed that the term ''period of enrollment'' should be defined in the same manner as the term is defined for the FFEL and Direct Loan programs in § 682.200(b) and § 685.102.

Date of the Institution's Determination That the Student Withdrew

As noted in the discussion of the determination of a student's withdrawal date, some aspects of the withdrawal process cannot occur until the institution is aware that the student has withdrawn. For example, an institution cannot be expected to return Title IV funds for a withdrawn student unless the institution knows that the student is no longer in attendance. This NPRM proposes to define the ''date of the institution's determination that the student withdrew'' for all possible types of withdrawals. As noted previously, the ''date of the institution's determination that the student withdrew'' is not necessarily the same as a student's withdrawal date. The proposed definition of withdrawal date in § 668.22(b) and (c) is for purposes of determining the percentage of the payment period or period of enrollment completed and thus the amount of aid a student has earned. The ''date of the institution's determination that the student withdrew'' is the date that is used to determine the amount of Title IV aid that has been disbursed. The amount of Title IV assistance that had been earned is subtracted from the amount disbursed or could have been disbursed in order to determine the amount of Title IV assistance that is to be returned. The ''date of the institution's determination that the student withdrew'' is also the date that ''starts the clock'' for the return of the Title IV, HEA program funds by the institution.

For a student who provided notification of his or her withdrawal, the date of the institution's determination that the student withdrew would be the later of the student's withdrawal date or the date of notification of withdrawal. For a student who did not provide notification of his of her withdrawal, this date would be the date that the institution becomes aware that the student has ceased attendance. For a student who does not return from an approved leave of absence, this date would be the earlier of the date of the expiration of the leave of absence or the date the student notifies the institution that he or she will not be returning. For a student who rescinds his or her intent to withdraw, but does not complete the payment period or period of enrollment, this date would be the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment. (These withdrawal situations are addressed in the discussions of §§ 668.22(b) and (c)). The committee believes that this proposed definition of the date of the institution's determination that the student withdrew captures the point when an institution could reasonably be expected to know that a student has ceased attendance.

Section 682.207 Due Diligence in Disbursing a Loan

Foreign institutions that participate in the Title IV, HEA programs are also subject to the requirements of section 484B of the HEA for the treatment of Title IV, HEA program funds when a student withdraws. However, the statute allows lenders to make FFEL program loan disbursements directly to a student who is attending a foreign school. As a result, a foreign school may not know if an FFEL program loan has been disbursed to a student. These proposed regulations would require a lender making a direct disbursement to a student attending a foreign school to notify the foreign school that the disbursement was made. These proposed regulations also would require that the notification provide the information necessary for the institution to determine the amount of Title IV, HEA program funds that the student has earned if the student withdraws.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

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

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

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

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

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

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

- The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:
- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 668.22 *Treatment of Title IV funds when a student withdraws.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESS** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities affected by these regulations are institutions of higher education that participate in the Title IV, HEA programs and individual recipients of Title IV, HEA program funds. Institutions are defined as small entities, according to the U.S. Small Business Administration, if they are for-profit or nonprofit entities with total revenue of $5,000,000 or less, or entities controlled by governmental entities with populations of 50,000 or less. Individuals are not considered small entities for this purpose. These proposed regulations would not have a significant economic impact on small institutions. These proposed regulations would incorporate clarifying definitions and provisions, and institute timeframes consistent, to the maximum extent possible, with existing program rules, for the most practical and uniform implementation of the new statutory requirements for the return of Title IV aid when a student withdraws.

These proposed regulations would specify when FSEOG program funds must be included in the calculation of the amount of title IV, HEA program assistance earned by a student as of the time he or she ceases enrollment. The regulations would define ''the date of the institution's determination that the student withdrew'' to simplify the institution's calculation of total aid disbursed. To minimize administrative burden, these regulations would adopt late disbursement procedures fundamentally consistent with current Cash Management rules when a student is determined to have earned more title IV, HEA program assistance than had been disbursed at the time the institution determines the student withdrew. These regulations would also provide flexibility in the granting of approved leaves of absence for exceptional circumstances, for military service, and for circumstances covered by the Family and Medical Leave Act of 1993.

The proposed regulations would enable the Secretary to better safeguard the Federal fiscal interest and the interests of students without imposing administrative burden or having a significant economic impact on small institutions.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Sections 668.22 and 682.207 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC, 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collection(s) of information in—

- Deciding whether the proposed collection(s) is [are] necessary for the proper performance of the functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection(s), including the validity of the methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

The campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Opportunity Grant (FSEOG) programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) programs, the Federal Pell Grant Program, and the LEAP Program are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

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

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

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

List of Subjects in 34 CFR parts 668 and 682

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

Dated: August 3, 1999.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 668 and 682 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

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

2. Section 668.22 is revised to read as follows:

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

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

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

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

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

(3) If the amount of title IV grant or loan assistance that the student earned as calculated under paragraph (e)(1) of this section is greater 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, the difference between these amounts must be treated as a late disbursement in accordance with paragraph (a)(4) of this section and § 668.164(g)(2).

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

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

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

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

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

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

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

(C) If the student or parent does not respond to the institution's notice, no portion of the late disbursement that is not credited to the student's account in

accordance with paragraph (a)(4)(i) of this section may be disbursed.

(D) If a student or parent submits a late response to the institution's notice, the institution may make the late disbursement as instructed by the student or parent or decline to do so in accordance with applicable program regulations.

(E) An institution must inform a student or parent electronically or in writing concerning the outcome of any late disbursement request.

(iii) A late disbursement must be made from available grant funds before available loan funds.

(b) *Withdrawal date for a student who withdraws from an institution that is required to take attendance.* (1) For purposes of this section, for a student who ceases attendance or for a student who does not return from an approved leave of absence, as defined in paragraph (d) of this section, at an institution that is required to take attendance, 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) An institution is ''required to take attendance'' if the institution is required to take attendance by an entity outside of the institution (such as the institution's accrediting agency or state agency).

(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 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 such circumstance; or

(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.

(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) 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), unless a later date is determined under paragraph (c)(3).

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

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

(ii) An ''academically-related activity'' is one that has been confirmed by an employee of the school (such as an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment or attending a study group that is assigned by the institution);

(4) An institution must document a student's withdrawal date determined in accordance with paragraph (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, 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) It is the only leave of absence granted to the student in a 12-month period;

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

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

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

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

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

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

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

(2) Notwithstanding paragraph (d)(1)(i), an institution may treat subsequent leaves of absence as approved leaves of absence if the institution documents that the leaves of absence are granted for military reasons or circumstances covered under the Family and Medical Leave Act of 1993.

(3) If a student does not resume attendance at the institution on or before the expiration of a leave of absence that meets the requirements of paragraph (d)(1) of this section, the institution must treat the student as a withdrawal in accordance with the requirements of this section.

(4) For purposes of this paragraph—

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

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

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

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

(B) Requires students to provide a written, signed, and dated request for a leave of absence prior to the leave of

absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence, provided that the institution documents its decision and collects the 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 recipient is calculated by—

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

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

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

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

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

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

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

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

(B) Clock hours completed during 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 when a student withdraws must be determined on a payment period basis for a student who attended a term-based educational program.

(ii)(A) The treatment of title IV grant or loan funds when 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.

(B) An institution must consistently use either a payment period or period of enrollment for all purposes of this section for all students who withdraw from the same non-term based education program.

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

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

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

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

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

(2)(i) The total number of calendar days in a payment period or period of enrollment includes all days within the period except for scheduled breaks of at least five consecutive days.

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

(g) *Return of Unearned Aid, Responsibility of the Institution.* (1) The institution must return, in the order specified in paragraph (i) of this section, the lesser of—

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

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

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

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

(i) The pro rated 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 returned the unearned funds for which it is responsible in accordance with paragraph (g) of this section, the student must return assistance for which the student is responsible in the order specified in paragraph (i) of this section.

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

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

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

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

(4)(i) An overpayment must be repaid to the institution or to the title IV, HEA programs and is subject to—

(A) Repayment arrangements satisfactory to the institution; or

(B) Overpayment collection procedures prescribed by the Secretary.

(ii) An institution must make reasonable efforts to contact the student and recover the overpayment in accordance with program regulations (34 CFR 673.5 for Federal SEOG funds and 34 CFR 690.79 for Federal Pell Grant funds).

(i) *Order of Return of title IV funds.* (1) *Loans.* Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraphs (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. Such funds shall 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 shall be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Federal Pell Grants.

(ii) Federal SEOG Program aid.

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

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

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

(i) Payment period or period of enrollment;

(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 § 668.44.

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

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

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

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

(i) For a student who provided 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 expiration 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.

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

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

4. Section 682.207 is amended by adding a new paragraph (b)(1)(v)(E) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(v) * * *

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

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

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

(*3*) The type of loan;

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

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

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

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